



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2005/62\*  
15 December 2004

Original: ENGLISH

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COMMISSION ON HUMAN RIGHTS  
Sixty-first session  
Item 11 (a) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF  
TORTURE AND DETENTION**

**Torture and other cruel, inhuman or degrading treatment**

**Report of the Special Rapporteur on the question of torture, Theo van Boven**

**Summary**

The Special Rapporteur on the question of torture, Theo van Boven, submits his fourth and final report to the Commission. Section I summarizes the activities of the Special Rapporteur in 2004 since the submission of his interim report to the General Assembly. In section II, the Special Rapporteur reports on his findings on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms.

The summary of communications sent by the Special Rapporteur from 16 December 2003 to 30 November 2004, and the replies received thereto from Governments by 15 December 2004, as well as a number of country-specific observations are found in addendum 1 to the report. The summary of the information provided by Governments and non-governmental organizations on the implementation of recommendations of the Special Rapporteur following country visits is found in addendum 2.

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\* Reissued for technical reasons.

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## **Introduction**

1. The mandate of the Special Rapporteur on the question of torture, created in 1985 and exercised since November 2001 by Theo van Boven (the Netherlands), was renewed for three more years by the Commission on Human Rights in its resolution 2004/41. The Special Rapporteur hereby submits his fourth report to the Commission, in accordance with the resolution.
2. Section I summarizes the activities of the Special Rapporteur in 2004 since the submission of his third interim report to the General Assembly (A/59/324). In section II, the Special Rapporteur reports on his findings on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms.
3. The summary of communications sent by the Special Rapporteur from 16 December 2003 to 30 November 2004, and the replies received thereto from Governments by 15 December 2004, as well as a number of country-specific observations are found in addendum 1 to the report. Addendum 2 contains the summary of the information provided by Governments and non-governmental organizations (NGOs) on the implementation of recommendations of the Special Rapporteur following country visits.
4. In the reports submitted to the Commission and the General Assembly, the Special Rapporteur and his predecessors have examined issues of special concern with respect to torture and other forms of ill-treatment. Readers are referred to the annex to the Special Rapporteur's previous report (E/CN.4/2004/56), containing a list of the issues considered by all the mandate-holders to date. The addition of the report to the General Assembly and the present report will complete this list.

### **I. ACTIVITIES OF THE SPECIAL RAPPORTEUR**

5. The Special Rapporteur draws the attention of the Commission to paragraphs 6-12 of his third interim report to the General Assembly, in which he described his activities in 2004 since the submission of the last report to the Commission on Human Rights.
6. The Special Rapporteur would like to bring the Commission up to date on the activities he has undertaken since the submission of his report to the General Assembly. Regarding country visits, the Government of China, which had postponed the visit scheduled to take place at the end of June 2004, invited the Special Rapporteur to visit the country in November 2004. He observes, however, that his letter of September 2004 requesting confirmation from the Government of the programme and modalities for the visit went unanswered, and the visit finally did not materialize. No response was received from the Government of the United States of America concerning the request made jointly in January 2004 with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to visit the United States naval base at Guantánamo Bay, Cuba. However, in relation to the request, contained in the joint statement on the protection of human rights in the context of anti-terrorism measures, adopted at the eleventh meeting of the special procedures of the Commission (E/CN.4/2005/5, annex I, sect. A), that the Special Rapporteur on the independence of judges and lawyers, the Chairperson-Rapporteur of the Working Group on Arbitrary

Detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture visit, together and at the earliest possible date, those persons arrested, detained or tried on the grounds of alleged terrorism or other violations, in Afghanistan, Iraq, the Guantánamo Bay military base and elsewhere, the Government of the United States of America indicated in November 2004, that in lieu of a visit to these places, a briefing with government officials would be provided for the four experts in Washington, D.C. The experts agreed to a briefing in Geneva, on a yet-to-be confirmed date, as long as it was considered as preparation for a forthcoming visit, in accordance with the usual practice for missions. The Special Rapporteur continued to actively consider invitations for fact-finding visits extended by the Governments of Bolivia, Georgia, Nepal and Paraguay. These visits have not yet materialized, for reasons beyond the control of the Governments concerned. He regrets that his earlier requests to visit Algeria, Egypt, Equatorial Guinea, India, Indonesia, Israel, the Russian Federation (with respect to the Republic of Chechnya), Tunisia and Turkmenistan have not yet led to results.

7. On 13 September 2004, the Special Rapporteur issued a press statement on the lack of cooperation by the Government of Uzbekistan with United Nations human rights mechanisms in relation to reports on executions of persons whose death sentences were allegedly based on confessions extracted under torture.

8. On 26 October 2004, the Special Rapporteur participated in an expert workshop on the issue of refoulement and diplomatic assurances, organized by the Jacob Blaustein Institute, New York.

9. On 27 October 2004, the Special Rapporteur presented his report to the General Assembly. In his statement to the Third Committee, he addressed, as a follow-up to previous interim reports submitted on the issue of the prohibition of torture in the context of anti-terrorism measures, attempts to circumvent the absolute and non-derogable nature of the prohibition. He discussed the principle of non-refoulement, recalling the jurisprudence underlying the principle, and noted the increase in practices being employed to undermine it. The Special Rapporteur drew attention to the most common consequences faced by victims of torture, including physical and psychological damage, as well as the consequences which affect victims' families and the community at large. On that occasion, the Special Rapporteur announced his resignation as of 1 December 2004. In doing so, he underlined that the monitoring activities and victim-oriented approach of the special procedures of the Commission make them complementary to the role played by the treaty bodies; they are an essential component of the United Nations system for the promotion and protection of human rights. Coordination between the various special procedures and the treaty bodies was a responsibility of the respective mechanisms, and of the Office of the High Commissioner for Human Rights as well. He stressed that proper follow-up of activities and recommendations of the special procedures was crucial; without it, their work would have only a limited impact. Finally, he pointed to the glaring discrepancy between the requirements of the workload of the mechanisms - a workload that was constantly growing - and the limited human and financial resources available to cope with it effectively.

10. On 24 November 2004, the Special Rapporteur, in his capacity as the chairperson of the eleventh meeting of special procedures mandate-holders, participated in the meeting of heads of OHCHR human rights field presences in a segment entitled "Ensuring one United Nations

human rights programme with three interlinked components: treaty bodies, special procedures, and technical cooperation”. In addition to the heads of human rights field presences, the participants included the Board of Trustees of the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights, and a representative of the treaty bodies.

11. On 25 November 2004, the Special Rapporteur participated in a meeting with the Committee against Torture, with a view to strengthening collaboration between the two mechanisms.

## **II. STUDY ON THE SITUATION OF TRADE IN AND PRODUCTION OF EQUIPMENT WHICH IS SPECIFICALLY DESIGNED TO INFLECT TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT, ITS ORIGIN, DESTINATION AND FORMS**

12. Pursuant to the request of the Commission on Human Rights to study the trade and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment (resolutions 2001/62, para. 9 and 2002/38, para. 13), the Special Rapporteur presented a preliminary study at the fifty-ninth session (E/CN.4/2003/69; see also E/CN.4/2004/56, paras. 66-68).

13. The Special Rapporteur noted therein that the allegations of torture that he has received from all regions of the world have involved instruments such as restraints (e.g. shackles, chains, bar fetters, leg irons, thumb-cuffs and shackle boards), electro-shock weapons (e.g. batons; stun guns, shields and belts; and tasers), kinetic impact devices (e.g. lathis, truncheons and sjamboks), and chemical control substances (e.g. tear gas and pepper spray). While some of the cases have involved the use of equipment which is inherently cruel, inhuman or degrading, and would per se breach the prohibition of torture, the vast majority have involved the misuse of those instruments, legitimate in appropriate circumstances, to inflict torture or other forms of ill-treatment. Moreover, instruments never designed for law enforcement purposes (e.g. garden hoses, electrical extension cords and plastic pipes) are often implicated in allegations of torture and ill-treatment. These observations are consistent with existing research, which indicates that only a fraction of the equipment used for torture is “specifically designed” for that purpose alone. The scope of the use of the instruments, the nature of their effects, and the international legal standards that restrict their use and require adequate training and accountability of law enforcement personnel have been well documented and discussed elsewhere.<sup>1</sup>

14. Despite an international legal framework in place to prohibit and prevent torture and ill-treatment, the use (or misuse) of these instruments continues to be facilitated by a lack of implementation of these international standards. Moreover, it is facilitated by a lack of specific measures to control the trade and proliferation of such instruments.

15. In resolution 2004/41, the Commission on Human Rights requested the Special Rapporteur to carry out further work with a view to finding the best ways to prohibit the trade and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, and to combat its proliferation. The present report builds upon the findings of the preliminary study, and uses them as a point of departure to outline an effective and efficient policy strategy to prevent the spread of “torture technology”, i.e. commonly used

instruments and techniques used in law enforcement but implicated in torture and ill-treatment. It highlights some of the challenges in measuring the global trade and proliferation of such instruments and techniques. The report considers the need to monitor developments in security and law enforcement technology that can easily be used for torture. It also considers the need to monitor and control the transfer of interrogation techniques, or know-how, in addition to hardware. An update of the European Commission's proposal for trade regulation, referred to in the preliminary report (para. 27), is provided. The report concludes with recommendations for a policy strategy for preventing the trade in torture technology.

### A. Measuring global trade

16. In order to devise a strategy to control the trade and proliferation of torture technology, the supply and demand, as well as the ease with which the movement of goods take place, need to be examined.

17. The following tables are intended to illustrate the regional spread of manufacturing of some commonly used instruments used in law enforcement but implicated in torture and ill-treatment.

18. *Restraints.* Old-style leg irons can be manufactured by small-scale producers or even, in some cases, by prisoners themselves. Excluding small-scale manufacturers, the number of companies that have been reported to manufacture, distribute or broker the sale of leg cuffs, leg irons and other shackles grew from 5 in the 1970s to 69 between 1998 and 2000.<sup>2</sup> However, the actual commercial manufacture of leg irons, leg-cuffs or other shackles appears to be undertaken by at least 20 manufacturers who supply the majority of the military, security, police and correctional markets.

Region	Number of companies
African States	1
Asian States	11
Eastern European States	1
Latin American and Caribbean States	-
Western European and other States	7
Total	20

19. Seven companies have been identified as manufacturers of thumb-cuffs in Asia. At least two produced rigid thumb-cuffs with serrated inner edges. Between 2000 and 2004, thumb-cuffs have been offered for sale in at least 14 countries, including over the Internet, where one web site selling law enforcement equipment has offered a set of rigid thumb-cuffs with serrated inner edges for less than US\$ 10.<sup>3</sup>

20. *Electro-shock devices.* Early electro-shock stun weapons were initially developed during the 1970s. In the 1980s some 30 companies worldwide were reported to be producing or supplying electro-shock stun weapons for law enforcement. By 2000, the number had risen to more than 130 companies.<sup>4</sup> Between 2000 and 2004 there have been at least 413 manufacturers, brokers or distributors of electro-shock weapons operating in 61 countries around the world:

Manufacturers, brokers and distributors of electro-shock weapons: 2000-2004	
Region	Number of companies
African States	20
Asian States	119
Eastern European States	59
Latin American and Caribbean States	19
Western European and other States	196
Total	413

21. However, the actual manufacture of electro-shock stun weapons appears to be undertaken by at least 56 companies located in just 12 countries:

Manufacturers of electro-shock weapons: 2000-2004	
Region	Number of companies
African States	2
Asian States	36
Eastern European States	5
Latin American and Caribbean States	3
Western European and other States	10
Total	56

22. *Chemical irritants.* The number of companies that manufacture and offer to supply different types of tear gas and pepper spray for law enforcement continues to grow. At least 54 companies that manufacture chemical irritants such as tear gas and pepper spray have been identified in 19 countries between 2000 and 2004:

Manufacturers of chemical irritants and chemical irritant devices: 2000-2004	
Region	Number of companies
African States	2
Asian States	15
Eastern European States	2
Latin American and Caribbean States	1
Western European and other States	34
Total	54

23. *Kinetic weapons.* Batons, and variations on them such as sticks, canes, sjamboks and lathis are the most commonly used police weapon worldwide. They are cheap, easily manufactured locally, and are generally issued to all officers, including those who would not normally carry a firearm or any other weapon. Whilst the majority of such devices employed by police and security forces, if used responsibly and strictly according to international human rights standards, can have legitimate functions, certain weapons do not, such as spiked steel police batons.

24. While the preceding tables and figures attempt to draw a rough picture of the regional distribution of manufacturers of some commonly used instruments implicated in torture and ill-treatment, it is apparent that the picture of the global trade is incomplete. This is due to the lack of appropriate and adequate data.

25. *Manufacturing data.* There are a number of limitations to measuring the level of manufacturing. Firstly, identifying a company as a manufacturer can be difficult as many claim to be manufacturers when in fact they are simply distributing products made by others. Secondly, establishing the number of manufacturing companies does not establish the actual number of goods produced or exported. Thirdly, identifying which company (or even country) was responsible for the original manufacture of such equipment is also complicated and obscured by the use of such transactions as “brokering” (i.e. where intermediaries or “middlemen” organize transfers of equipment between two or more parties, bringing together buyers, sellers, transporters, financiers, etc.), or “drop shipping” (i.e. where a retailer in one country arranges for a manufacturer in another country to ship items directly to the retailer’s customer).

26. *National export control data.* In many countries a manufacturer or supplier is not required to possess an export licence to ship these goods, even if the “end-user” in the destination country has a documented record of using such equipment to commit torture.

27. *International trade statistics.* International trade statistics do not provide useful data for monitoring the trade in security and law enforcement that can easily be used for torture because the product codes within the Standard Industrial Classification Codes (SIC), the North American Industrial Classification System (NAICS), and the various country derivatives of the SIC code are too broad. For example, SIC 5099 is the product code which covers “electronic stun weapons”, but it also includes “pre-recorded audio cassette tapes”, “leather attachés and briefcases” and a range of other electronic goods. The 2002 NAICS Code 332999 is the code which covers “cuffs and leg irons”.<sup>5</sup> But it also covers a wide range of other metal products including angle irons, animal traps, car seals, fireplace fixtures, and many other product categories. This aggregation of products in one code makes it difficult to track the trade in torture technology. One example, drawn from national legislation, of a control and transparency mechanism incorporates the use of a control category of “specially designed implements of torture”.

28. Without accurate data on equipment manufacturers, transfers, or on the quantities and destinations of exports, it is difficult to regulate and monitor this trade. Where Governments do operate export controls on such equipment, it is important that the controlled categories of equipment be sufficiently disaggregated for the sake of transparency and effective public scrutiny.

## **B. Future technological trends**

29. New products are being marketed internationally for use in security and law enforcement whose use in practice has sometimes revealed a substantial risk of abuse or unwarranted injury, or whose medical and other effects appear not to be reliably known. The medical and other effects of the products should have been subjected to rigorous inquiries by medical, scientific and law enforcement experts who are fully independent of the manufacturers, traders and law enforcement agencies promoting them, and whose proceedings and conclusions are transparent and subject to peer review in public scientific literature.

30. A number of countries are developing equipment for the purposes of crowd control by law enforcement. This equipment employs a range of new technologies, and is referred to as “non-lethal weapons”, including devices which employ high-decibel sounds and microwaves.

Just as the equipment described earlier may be non-lethal and legitimate if used correctly, these new technologies have the potential to be used for torture and ill-treatment, including collective punishment, if abused. Therefore, thorough research into their effects on people, stringent training and restrictions on their transfer need to be considered.

### **C. Transfer of interrogation techniques and know-how**

31. A number of States are important providers of training and assistance to the military, security or police forces of foreign States. This training and assistance may have the potential to benefit recipient communities by providing better-skilled military or law enforcement officers who respect the rule of law and seek to promote and protect the rights of the civilian population. However, unless such transfers are stringently controlled and independently monitored, there is a danger that they will be used to facilitate torture and ill-treatment.

32. Furthermore, the provision of security and/or military services by private contractors to both governmental and non-governmental clients has become a growing market, and one that has largely evaded proper regulation and monitoring by Governments. Inadequately controlled private security or military companies have sometimes facilitated and carried out torture and ill-treatment in the recipient countries.

### **D. Update on the proposal for a regional control mechanism**

33. The European Commission's proposal of a Council Regulation "Concerning trade in certain equipment and products which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment" was amended on 29 October 2004 (COM (2004) 731),<sup>6</sup> and discussions in this regard are expected to be concluded in the near future.

34. If adopted by the EC and ratified by European Union member States, the regulation will ban trade in equipment which "has no, or virtually no, practical use other than for the purpose of" capital punishment or torture from member States to countries outside the EU. Included in the regulation's draft list of equipment whose trade would be absolutely prohibited are restraints such as leg irons, gang chains and shackles, individual cuffs or shackle bracelets, thumb-cuffs and thumbscrews, including serrated thumb-cuffs.

35. The proposed regulation will also put strict controls on the trade in equipment that it regards as having legitimate uses but which "could be used for the purpose of" capital punishment or torture. This category includes electric shock batons and shields, stun guns and tasers, tear gas and pepper spray. EU Governments would be required to strictly control the trade in such equipment and refuse to authorize their transfer to any law enforcement authorities that have practised torture within the previous five years, or where there are "reasonable grounds to suspect or believe" that the law enforcement authority concerned is committing or tolerating acts of torture.

36. Once adopted, the regulation will mark the first time that such trade controls have been developed on a regional basis, which is a welcome contribution to the prevention of the violation of the absolute right not to be subjected to torture, or other cruel, inhuman, or degrading treatment or punishment. However, it has been observed that the proposed regulation is still limited in a number of respects:

(a) *Brokers.* The proposed regulation will only control the activities of EU-based brokers where equipment covered by the regulations is to be imported from or exported directly to an EU State. Provisions in earlier drafts would have controlled the brokering, mediating and arranging of deals in such equipment through “third countries”. These earlier provisions would have been consistent with the European Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering;

(b) *Trade within the EU.* The current proposed regulation will cover trade with parties outside the EU, but not within the EU, as member States are assumed to have adopted appropriate measures to outlaw and prevent torture;

(c) *Production and use of equipment by member States.* The proposed regulation leaves it to the discretion of member States to impose and enforce the necessary restrictions on the use and production of such equipment;

(d) *Transfer of torture techniques.* Although the proposed regulation will control the provision of technical assistance related to repairs, development, manufacture, testing, maintenance, or any other technical service, it does not appear to cover the transfer of security and law enforcement training.

#### **E. Conclusions and recommendations**

37. **The Special Rapporteur considers that the obligation to prevent torture in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment necessarily includes the enactment of measures to stop the trade in instruments that can easily be used to inflict torture and ill-treatment. Taken together with international standards which regulate the use of equipment used by law enforcement agencies, there already exists a basis for a global framework for prevention in this area. In his preliminary study the Special Rapporteur noted examples of national measures to prevent such trade;<sup>7</sup> however, such measures by themselves cannot adequately control this trade, which is of a global scale. Any effective strategy requires commitment and cooperation by States at the national, regional and international levels. Within the existing framework of international standards to prohibit torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur calls upon States and, where appropriate, competent review and monitoring mechanisms:**

(a) **To 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;**

- (b) **To 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. Such controls should include an effective governmental export licensing system, which includes “end-user” certificates that are guaranteed by the recipient Government, and “end-use” monitoring by independent organizations;**
- (c) **To suspend the manufacture, transfer and use of equipment whose medical effects are not fully known or whose use in practice has revealed a substantial risk of abuse or unwarranted injury, pending the outcome of a rigorous and independent inquiry into its use;**
- (d) **To monitor research and development of security and law enforcement technologies;**
- (e) **To collect and disseminate data on the manufacture and trade of security and law enforcement equipment, disaggregated, among other factors, by discrete product classification categories, the number of export licences granted, quantities, and destinations of exports;**
- (f) **To consider the development of an international regulatory mechanism, taking due regard of the work in this area that has already been carried out by the European Commission, in particular, the proposal of a Council Regulation “Concerning trade in certain equipment and products which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment” (COM (2004) 731 of 29 October 2004);**
- (g) **To ensure that the transfer of expertise to, and/or training of, military, security and police personnel of another country does not involve the transfer of skills, knowledge or techniques likely to lend themselves to torture in the recipient country. The practical application of relevant international human rights standards and international humanitarian law should be fully integrated into such training programmes;**
- (h) **To introduce legislation to control and monitor the activities of private providers of military, security and police services to ensure that they do not facilitate or perpetrate torture. Companies and individuals providing these services should be required to register and to provide detailed annual reports of their activities. Every proposed international transfer of personnel or training should require prior government approval, which should only be granted in accordance with publicly available criteria based on international human rights standards and international humanitarian law.**

38. **The Special Rapporteur should examine the situation of trade in instruments used for torture in the course of his/her country visits and transmit communications to Governments concerning allegations of trade in security and law enforcement technology easily used for torture.**

39. **The Committee against Torture should examine the question of trade in instruments used for torture in the course of its consideration of States parties’ reports.**

**Notes**

<sup>1</sup> E.g. E/CN.4/2003/69; the communications reports of the Special Rapporteur, such as E/CN.4/2003/68/Add.1 and E/CN.4/2004/56/Add.1; Amnesty International, *The Pain Merchants: Security equipment and its use in torture and other ill-treatment* (London, 2003) AI Index ACT 40/008/2003; and M. Kerrigan, *The Instruments of Torture* (New York, 2001).

<sup>2</sup> *The Pain Merchants*.

<sup>3</sup> [www.stationhouse.com/outfitters/fury/fury\\_products.htm](http://www.stationhouse.com/outfitters/fury/fury_products.htm), Police and Security Restraints from Fury, visited on 23 February 2004.

<sup>4</sup> Amnesty International, *Stopping the Torture Trade* (London, 2001), AI Index ACT 40/002/2001.

<sup>5</sup> <http://www.census.gov/epcd/naics02/def/ND332999.HTM>.

<sup>6</sup> [http://europa.eu.int/eur-lex/en/search/search\\_lip.html](http://europa.eu.int/eur-lex/en/search/search_lip.html).

<sup>7</sup> E.g. E/CN.4/2003/69, paras. 21-24 and 28-30.

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