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

**Study 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,  
submitted by Theo van Boven, Special Rapporteur on torture,  
pursuant to resolution 2002/38 of the Commission on Human Rights**

### **Executive summary**

In accordance with paragraph 13 of resolution 2002/38, the Special Rapporteur hereby presents a preliminary study on the situation of trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and to combat its proliferation.

The attention of the Commission is first drawn to a number of references to such equipment in previous reports submitted by the Special Rapporteur. The legitimate use of some kinds of such equipment, in particular certain restraints (such as handcuffs) and kinetic and chemical devices, is recognized in a number of appropriate circumstances. The Special Rapporteur notes that they may often constitute non-lethal alternatives to other security devices. It is nevertheless alleged that they have also been misused or intentionally used to inflict torture and other forms of ill-treatment. It is, however, believed that other types of equipment are inherently cruel, inhuman or degrading and that their use would necessarily breach the prohibition of torture and other forms of ill-treatment.

It is not the Special Rapporteur's intention to draw up a list of all equipments and instruments whose use is deemed to be inherently cruel, inhuman or degrading, as this would require more in-depth research. He does, however, express concern over the use of certain kinds of equipment regarding which the exact medical effects, including psychological ones, are reportedly still unknown. The absence of thorough, independent and impartial medical testing on short- and long-term effects poses a real problem in assessing whether a specific device is inherently cruel, inhuman or degrading.

International human rights law has up to now mainly addressed the question of the circumstances in which such equipment can be used. Detailed guiding principles regarding the classification, use and monitoring of law enforcement and restraint equipment have been developed. They have in common the stipulation that force should only be used when strictly necessary and should be used in a manner proportionate to what is necessary to achieve a legitimate objective (principle of proportionality).

Regarding the trade in instruments specifically designed to inflict torture and other forms of ill-treatment, it is reported that this is a global trade involving countries of every region in the world. Information currently available regarding the companies involved is reportedly not comprehensive and is believed not to represent the true scale of the production and trade in such equipment, as very few Governments provide data in that respect. In particular, it must be noted that a large number of countries do not require licences for the export, trans-shipment or brokerage of such products.

In the present report, the Special Rapporteur notes with appreciation a number of initiatives taken at the national and regional levels to prevent the trade and production in equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. The Special Rapporteur would welcome further information from Governments and other interested parties on such initiatives with a view to establishing a set of best practices at a later

stage. In particular, the Special Rapporteur would like to stress the importance of establishing monitoring mechanisms to control respect for trade and production regulations, be they national or international.

Finally, the Special Rapporteur reminds States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of its article 2 which provides that “each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. He believes 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 this obligation of a general nature to prevent acts of torture.

The Special Rapporteur fully believes in the necessity of keeping the study ongoing, and hopes that the Commission on Human Rights will continue to request him to keep this issue under consideration. He encourages Governments and non-governmental sources that have not yet done so to submit information on the issue to enable him to carry out an in-depth study with a view to making specific recommendations on how to prohibit the trade and production of such equipment and to combat its proliferation.

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## Introduction

1. In paragraph 9 of its resolution 2001/62, the Commission on Human Rights requested the Special Rapporteur to “study the situation of trade and production in equipment [which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment], its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and to combat its proliferation, and to report thereon to the Commission”. Accordingly, on 7 August 2001, a note verbale was sent by the secretariat to all Permanent Missions to the United Nations Office at Geneva, to international organizations and to relevant intergovernmental and non-governmental organizations. In his report to the subsequent session of the Commission on Human Rights, the previous Special Rapporteur, Sir Nigel Rodley, noted that in view of the limited number of comments received, “further information would be needed to allow his successor to carry out this study effectively” (E/CN.4/2002/76, para. 4).

2. In paragraph 13 of resolution 2002/38, the Commission renewed its request to the Special Rapporteur to “continue the study, with a view to its prompt completion” and called upon States and non-governmental organizations to provide the information requested by the Special Rapporteur. In his first report to the Commission, the newly appointed Special Rapporteur, Theo van Boven, being “fully aware of the importance of the study requested” (E/CN.4/2002/137, para. 18), expressed the hope that he would receive further information that would allow him to carry out this study and report to the Commission. Thus, on 3 June 2002, a second note verbale was sent by the secretariat to that effect.

3. At the time of writing, the Special Rapporteur had received information and comments from the Governments of Argentina, Bahrain, Belarus, Colombia, Cuba, Germany, Kuwait, Lebanon, Mauritius, Spain, Switzerland, Togo, Tunisia and Uzbekistan, as well as from the NGOs: Amnesty International, the Omega Foundation and the International Police Association. From 25 to 26 October 2002, the Special Rapporteur also took part in an International Expert Meeting on Security Equipment and the Prevention of Torture, convened by the International Secretariat of Amnesty International in London.

4. In accordance with the above-mentioned resolutions, the Special Rapporteur hereby submits a preliminary study on the question of the trade in and production of equipment specifically designed to inflict torture and other forms of ill-treatment.

### **I. INFORMATION REGARDING SUCH EQUIPMENT PREVIOUSLY REVIEWED BY THE SPECIAL RAPPORTEUR**

5. The Special Rapporteur would like to draw the attention of the Commission to a number of references to such equipment in reports previously submitted to it. In particular, it is interesting to note that the first Special Rapporteur on torture, Peter Kooijmans, indicated in his first report to the Commission on Human Rights in 1986 that several countries produce and export instruments specifically designed to inflict torture (see E/CN.4/1986/15, paragraphs 120-121).

6. Over the years, information alleging torture and other forms of ill-treatment involving the use of security and other equipment and instruments deemed to be specifically designed for that purpose has been brought to the attention of Governments. In particular, reference was made to low-technology mechanical restraints, such as shackles, chains, leg irons and thumbcuffs; restraint chairs, shackle boards and other devices, such as the *Di Lao* in which victims' wrists and feet are reportedly shackled and linked together with crossed steel chains making it nearly impossible to walk or sit down; electro-shock weapons, such as electro-shock batons, stun guns, stun shields and tasers, electro-shock stun belts and kinetic impact devices; and chemical control substances, such as tear gas and pepper sprays. The Special Rapporteur's attention was drawn during the International Expert Meeting referred to above to the fact that new equipment and technologies continue to be developed and that particular attention should be paid to anticipating such developments in undertaking this study.

7. The legitimate use of certain kinds of such equipment, in particular some restraints (such as handcuffs) and kinetic and chemical devices, is recognized in a number of appropriate circumstances. The Special Rapporteur notes that they may often constitute non-lethal alternatives to other security devices. It is nevertheless alleged that they have also been misused - sometimes due to a lack of proper training - or intentionally used to inflict torture and other forms of ill-treatment. On the other hand, it is believed that other types of equipment are inherently cruel, inhuman or degrading and that their use would necessarily breach the prohibition of torture and other forms of ill-treatment.

8. For example, with respect to stun devices, the Special Rapporteur notes that his predecessor concluded that "[a]ccording to the information received, stun devices, which incapacitate an inmate by transmitting electric shocks, can reportedly cause high levels of pain and may result in serious injuries, possibly even death in certain circumstances. ... Activation of the [stun] belt reportedly transmits a 50,000-volt shock to the left kidney, through blood vessels and nerves for eight seconds, causing severe pain, instant immobilization, and possibly involuntary defecation and urination ... serious concerns had been expressed as to the nature of such belts as a device designed to humiliate and degrade" (E/CN.4/1998/38, para. 201).<sup>1</sup> This finding is supported by the concerns expressed by the Committee against Torture that "[t]he use of electro-shock devices and restraint chairs as methods of constraint, ... may violate the provisions of article 16 of the Convention".<sup>2</sup>

9. Similarly, with respect to bar fetters, which consist of iron rings locked around the ankles of a prisoner with an iron bar riveted to each of these shackles, keeping the prisoner's legs permanently apart at the bar's length, the Special Rapporteur would like to draw to the Commission's attention a landmark decision by the Sindh High Court (Pakistan) in which the Court stated that "[t]he manner in which the prisoners are kept in the Security/Bund Wards with bar fetters on is humiliating and against the dignity of man".<sup>3</sup> Accordingly, the High Court held that the provisions regarding bar fetters were in violation of the constitutional guarantee of the inviolability of the dignity of man. This court seems thus to have recognized the inherent inhuman and degrading character of these restraint instruments. Later, the Special Rapporteur was informed by the Government of its decision to ban the use of bar fetters throughout Pakistan, except in rare cases of high security prisoners and only in full compliance with the interim orders of the Supreme Court of Pakistan (see E/CN.4/2001/66, paragraph 834).

10. The Supreme Court of Namibia reportedly reached a similar conclusion with respect to the chaining of prisoners in leg irons or chains. An application was brought on their behalf, on the grounds that their placement in irons or chains was inhumane and degrading treatment in violation of the bill of rights. In 1999, the Supreme Court ruled that the practice was unconstitutional.<sup>4</sup> That some of these prisoners had been kept in chains for the extended period of four months awaiting trial was brought to the attention of the Government, inter alia by the Special Rapporteur (see E/CN.4/1999/61, paragraph 527).

11. Numerous other examples may be found in various reports of the Special Rapporteur. It is nevertheless not his intention to draw up a list of all equipment and instruments whose use is deemed to be inherently cruel, inhuman or degrading, as this would require more in-depth research. The Special Rapporteur would, however, like to express his concern over the use of certain kinds of equipment regarding which the exact medical effects, including psychological ones, are reportedly still unknown. The absence of thorough, independent and impartial medical testing into short- and long-term effects poses a real problem in assessing whether a specific device is inherently cruel, inhuman or degrading.

12. For example, chemical agents, such as tear gas/irritant ammunition and pepper spray weapons, are said to be promoted as providing effective control without the risk to life, i.e. as “humane alternatives” to lethal force. However, according to information received, insufficient research has been undertaken into their potential effects on targeted persons. The Special Rapporteur notes in particular that chemical agents provided for “crowd-control” purposes are prone to abuse if used against demonstrators in an indiscriminate manner. Precise practical guidelines regarding the circumstances in which such chemical agents may be used, as well as information regarding their effects on specific categories of persons such as children, pregnant women and persons with respiratory problems, are said often to be lacking. Similarly, with respect to electro-shock devices, the South African Joint Committee of Inquiry into the Background, Circumstances and Actions resulting in the Death and Injury of Railway Commuters at Tembisa Station on 31 July 1996 had recommended that “the use of electric batons be banned in South Africa. This should remain the case until a regulatory framework exists for the manufacture, sale and use of electric batons and reliable and independent medical and legal research establishes that the use of the electric baton on any person would not subject such a person to cruel, inhuman and degrading treatment or punishment”. Furthermore, it is believed that law enforcement agents professionally entitled to use such devices are often not trained to provide potential victims with appropriate medical care.

13. Similarly, it is believed that a number of such devices, in particular electro-shock weapons, lend themselves to abuse as they can be used to inflict great pain without leaving major visible traces of injury. The range of devices relying on high voltage electro-shock technology is said to have expanded throughout the 1990s, and electro-shock batons and stun guns were followed by the production of stun shields, dart-firing stun guns, stun belts and tear gas stun weapons. According to the information received, electro-shock devices are alleged to have been used to torture or ill-treat persons in prisons, detention centres or police stations in at least 76 countries in every region of the world.<sup>5</sup>

## II. EXISTING LEGAL FRAMEWORK REGARDING THE USE OF SUCH EQUIPMENT

14. International human rights law has up to now mainly addressed the question of the circumstances in which such equipment can be used. In particular, article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that “[e]ach State Party shall keep under systematic review interrogation rules, instructions, *methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment* in any territory under its jurisdiction, with a view to preventing any cases of torture” (emphasis added).

15. More detailed guiding principles regarding the classification, use and monitoring of law enforcement and restraint equipment have been developed. They have in common the stipulation that force should only be used when strictly necessary and should be used in a manner proportionate to what is necessary to achieve a legitimate objective (principle of proportionality).

16. Paragraph 2 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that “Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.”

17. Some of these principles address specific equipment. For example, with respect to instruments of restraint, the Standard Minimum Rules for the Treatment of Prisoners provides that “[i]nstruments of restraint, such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances: (a) as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority; (b) on medical grounds by direction of the medical officer; (c) by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority” rule 33). Rule 34 states, inter alia, that “such instruments must not be applied for any longer time than is strictly necessary”.

18. Furthermore, these different principles reflect a need for evaluation, control and monitoring mechanisms in their development and deployment. In particular, article 3 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials stipulates that “(t)he development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such

weapons should be carefully controlled”. Precise guidelines regarding the circumstances in which such security or control equipment may be used and proper training of law enforcement agents are often believed to be lacking.

19. In that respect, the Government of Spain indicated by letter dated 8 August 2002 that “... all the police and security equipment used by the Security Forces and Bodies in discharging their public safety duties is subjected to rigorous studies with regard to its effects on people, and is certified by the competent ministries. Furthermore, the Spanish authorities emphasize that the training plans of the members of such Security Forces and Bodies must foster respect for human rights and the commitment to eradicate torture, and that they must not teach techniques or procedures that can be linked with practices akin to torture”.

### **III. INFORMATION RECEIVED REGARDING THE PRODUCTION OF AND TRADE IN SUCH EQUIPMENT**

20. The Special Rapporteur has received information indicating that the trade in instruments specifically designed to inflict torture and other forms of ill-treatment is a global trade involving countries of every region in the world.<sup>6</sup> Information currently available regarding the companies involved is reportedly not comprehensive and is believed not to represent the true scale of the production and trade in such equipment, as very few Governments provide data in that respect. In particular, it must be noted that a large number of countries do not require licences for the export, trans-shipment or brokerage of such products. For example, mechanical restraints, such as handcuffs, leg irons, shackles, chains and thumbcuffs (so called “low-technology equipment”), are reportedly transferred from country to country with little government control either of its trade or of its use.<sup>7</sup>

21. In that respect, the Special Rapporteur would like to refer to a document entitled “Action being taken to ban the export of electro-shock weapons” which was handed to him during the International Expert Seminar by a representative of the Foreign and Commonwealth Office (United Kingdom of Great Britain and Northern Ireland) which reproduced a statement made by the Secretary of State for Foreign and Commonwealth Affairs on 28 July 1997. This statement affirmed the British Government’s commitment to “preventing British companies from manufacturing, selling or procuring equipment designed primarily for torture and to press for a global ban” and to take the necessary measures to prevent the export or trans-shipment from the United Kingdom of: “[p]ortable devices designed or modified for riot or control purposes or self-protection to administer an electric shock, including electro-shock batons, electric-shock shields, stun guns and tasers and specially designed components for such devices, leg irons, gang chains, shackles (excluding normal handcuffs) and electric-shock belts designed for the restraint of a human being”. The Special Rapporteur further notes the appeal to other European Union members, in an effort “to prevent would-be torturers from procuring such equipment elsewhere”, to impose similar restrictions, “as a first step towards a global ban”.

22. By letter dated 22 August 2002, the Government of Argentina informed the Special Rapporteur that the Congress was considering a very detailed draft resolution designed to “repudiate and condemn the production and export of torture equipment and to request the executive branch to prohibit the production, export, import and marketing of police and security equipment whose use is intrinsically cruel, inhuman and degrading”. The draft resolution further

“urges other States to take effective control measures to ensure that such equipment is no longer exported”. It is reported that this draft bill, a copy of which was attached to the letter, has already been examined by various commissions of the Congress, such as the Commission on Criminal Legislation, the Commission on Human Rights and Guarantees, the Commission on Industry and the Commission on Trade.

23. By letter dated 28 June 2002, the Government of Lebanon informed the Special Rapporteur that “there is no trade or other practice such as cruel and inhuman or humiliating treatment. The departments concerned take every measure to prohibit the trade and import of such equipment in Lebanon. The security authorities, under the supervision of the judiciary, carry out all the relevant investigations to prevent any marketing of this kind of equipment. In Lebanon there is no legislation prohibiting the production of this kind of equipment. However, the Government may promulgate a law in this regard, in accordance with the legal standards”.

24. Similarly, by letter dated 20 November 2001, the Government of Tunisia indicated that “... Tunisian law prohibits this kind of activity (production, trade, export or use of equipment especially designed to inflict torture) and considers it illicit. In this regard, the Law of Contract, which in its articles 67 and following covers contractual obligations, stipulates that “any obligation without consideration, or for an illicit consideration, shall be null and void”. It adds that “the consideration shall be illicit if it is contrary to good morals, public order or the law”.

25. The Special Rapporteur welcomes such initiatives at the national level. Nevertheless, as stated above, only a global ban would effectively prevent the trade in such equipment.

26. In that respect, the Special Rapporteur notes with satisfaction the initiative at the regional level of the European Parliament which adopted in 2000 a resolution,<sup>8</sup> welcoming the fact that there has been agreement in the Council on a common list of non-military security and police equipment, and urging the Commission to ensure that a control mechanism of such equipment includes a ban on the promotion, trade and export of police and security equipment whose use is inherently cruel, inhuman or degrading, including leg-irons, electro-shock stun belts and inherently painful devices such as serrated thumbcuffs. The Parliament further urged the suspension of “the transfer of equipment whose medical effects are not fully known, such as high-voltage electro-shock weapons, pending the outcome of a rigorous and independent inquiry into its effects”; as well as “of equipment where its use in practice has revealed a substantial risk of abuse or unwarranted injury, such as leg-cuffs, shackle boards, restraint chairs and pepper gas weapons”. The European Parliament called upon the Commission to “commit itself to a European Commission-wide ban on the manufacture and use or, where applicable, the suspension of such equipment”. The Parliament expressed its disappointment that “little progress seems to have been made towards controlling arms brokerage”, called for member States to increase their efforts towards controlling arms brokerage, and to work towards the development of an international legally binding agreement on brokering. The Parliament furthermore addressed the need for a common system of end-use monitoring, and for controls in the licensed production abroad of military equipment by European Union companies. The European Parliament furthermore stressed the need for transparency, *inter alia* in the form of harmonized national annual reports containing transparent and detailed information (including on licensing policy, policy developments, treaty commitments, international obligations (e.g. embargoes), changes to legislation for each licence granted or denied, a description of the

equipment, details on the quantity, destination, end-user and value, and reasons for the denial of licences), and parliamentary scrutiny of arms export control policies and export licensing decisions of member States.

27. The Special Rapporteur would like to draw the attention of the Commission on Human Rights to the European Commission's "Proposal for 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" adopted on 30 December 2002 (COM(2002)770) (annex I). This proposal is the basis for discussion in the Council of the European Union. The regulation would be adopted by the Council if a qualified majority of the member States, as defined in article 205 (2) of the Treaty establishing the European Community, is in favour. It must be noted that Council regulations are directly applicable legislation in all member States of the European Union and take precedence over conflicting legislation of the member States. The objective of the proposal is to set up a specific trade regime covering certain equipment and products which could be used for torture and other cruel, inhuman or degrading treatment or punishment. As stated, the purpose of a regime of this kind is to contribute to the prevention of the violation of the fundamental human right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

28. It is reported that some countries exporting security equipment and other crime control items have enacted legislation providing for the taking into account of the human rights record in the issuing of licensing decisions. In particular, the Special Rapporteur received information during the International Expert Seminar according to which the United States of America requires such a licence to export most crime control items.<sup>9</sup> In general, such licence would be denied with respect to the export of such items to any country in which the Government engages in a consistent pattern of human rights violations or in which there is civil disorder. Reference was made to the Lantos-Hyde Amendment to the Export Administration Act (section 311, H.R. 2581) which bans the export of crime control equipment when the foreign Government has repeatedly engaged in acts of torture. It also bans the exports of torture equipment, including saps, thumbcuffs and electro-shock stun belts. It must be noted that the factual information compiled in the Department of State's annual Country Reports on Human Rights Practices is said to be a significant element in the licensing recommendations.

29. Similarly, by letter dated 23 October 2002, the Government of Switzerland informed the Special Rapporteur that "the federal law on weapons designates as weapons devices such as normal or spring-loaded police batons and electro-shock devices that can certainly be used for torture. It stipulates that the export and transit of weapons, brokering of weapons for foreign customers and foreign trade in weapons are governed by the federal law on implements of war, if the weapons in question are also subject to that law. In such cases an authorization is required, which is dependent on a number of conditions set by the Ordinance on Implements of War, [including]: peacekeeping and the maintenance of international security and regional stability; (b) the situation prevailing in the country of destination, particularly as regards human rights and refusal to use child soldiers; ... (d) the country of destination's attitude towards the international community, particularly as regards public international law; (e) the position adopted by countries which are participants with Switzerland in international export control mechanisms".<sup>10</sup>

30. By letter dated 3 January 2002, the Government of Germany indicated that “[t]he authorization requirement under German export control legislation takes appropriate account of both the need for effective control and possibilities to export the respective goods for safe end-use abroad ... Authorizations are not granted unless safe end-use can be expected, i.e., if misuse of goods, in violation of human rights, would appear to be excluded. For this reason, applications must be accompanied by documents stating the final destination and end-use of the goods as well as the intended purpose. In its examination, the Federal Office of Economics and Export Control also has recourse to all information available, including findings of German authorities such as the Federal Intelligence Service, and of international organizations and human rights organizations. It further added that “... countries that violate human rights mainly use devices for torture which normally serve legitimate purposes. Danger of misuse results from the way in which such devices are employed. In the view of the German Government the risk of misuse can effectively be controlled in the best way by taking the measures under export control law described above”.

31. Despite a number of positive initiatives taken at the national level, some examples of which are mentioned above, it is reported that the prohibition of the trade in such equipment is often not effectively enforced due to the absence of parliamentary control mechanisms on military, security and police equipment and the absence of transparency. In some countries, trade controls are said to be evaded or legal loopholes exploited by companies which circumvented a ban on export by “brokering” such items whilst they were being sold by agents in third countries where such export is not regulated or prohibited.

32. As regards the security equipment referred to above, those who manufacture such items are said to benefit from official secrecy and a lack of accountability. Most Governments reportedly do not provide specific details of production activities, international transfers or sales, nor do they allegedly require brokers or carriers of such equipment to register officially with the Government or to seek licensed approval for the export of such weapons. This is said to be particularly true for low-technology restraint instruments and non-lethal electro-shock and chemical weapons. As stated by the Government of Cuba in its letter dated 2 September 2002, “banning only one stage in the process would leave the possibility open for the use of these methods and would encourage an illegal export market in that production of this equipment would continue”.

33. With respect to equipment which if properly used in appropriate circumstances would guarantee the right to physical and mental integrity, it is noted that exports of such equipment are often said to be granted in cases where there has been no adequate training of the law enforcement bodies in its use in the receiving country, and in the absence of clear guidelines for their use and of national control mechanisms. For example, an ever-increasing range of kinetic impact devices are being developed. Whereas the trained and proper use of straight batons under an accountable system may be compatible with international obligations, other devices and batons specifically designed to inflict higher pain levels (such as “control batons”, side- or multi-handled batons, batons with metal knobs or balls at the end, weighted batons, gloves (saps) or clubs and expandable batons, spiked batons, slappers, lathis, sjamboks, etc.) are reportedly being traded and used for the application of excessive force. Such devices are also said to have been used against persons already placed in restraint positions, allegedly with no other purpose than to inflict pain.

#### IV. PRELIMINARY CONCLUSIONS

34. The Special Rapporteur notes with appreciation a number of initiatives taken at the national level to prevent the trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. The Special Rapporteur would welcome further information from Governments and other interested parties on such initiatives with a view to establishing a set of best practices at a later stage. In particular, the Special Rapporteur would like to stress the importance of establishing monitoring mechanisms to control respect for trade and production regulations, be they national or international. He would also like to draw the attention of the Commission on Human Rights to the recommendations made by Amnesty International to Governments and companies in 2001 (annex II).

35. The Special Rapporteur would like to remind States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of its article 2 which provides that “each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. He believes 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 this obligation of a general nature to prevent acts of torture.

36. The Special Rapporteur fully believes in the necessity of keeping the study ongoing, and hopes that the Commission on Human Rights will continue to request him to keep this issue under consideration. He encourages Governments and non-governmental sources that have not yet done so to submit information on the issue to enable him to carry out an in-depth study with a view to making specific recommendations on how to prohibit the trade and production of such equipment and to combat its proliferation.

#### Notes

<sup>1</sup> Furthermore, it was reported that “[s]tun belts had allegedly already been used as instruments of restraint during judicial hearings in violation of the Standard Minimum Rules for the Treatment of Prisoners which prohibit the use of restraints on prisoners when appearing before a judicial authority”.

<sup>2</sup> Report of the Committee against Torture on its Twenty-fourth session, *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 44 (A/55/44)* conclusions and recommendations on the initial report of the United States of America, para. 179 (e). Accordingly, the Committee recommended that the State party “abolish electro-shock stun belts and restraint chairs as methods of restraining those in custody; their use almost invariably leads to breaches of article 16 of the Convention”. *Ibid.*, para. 180 (c).

<sup>3</sup> Decision of the Sindh High Court dated 30 December 1993, p. 3, quoted in E/CN.4/1997/7/Add.2, para. 59 and note 1. In the specific cases referred to in the latter report, the purposes of the imposition of bar fetters for extended periods, i.e. either for transfers from the jail or as a method of punishment, were also said to be in violation of the Standard Minimum Rules for the Treatment of Prisoners (rules 33 and 34) and was considered as a form of inhuman or degrading treatment. *Ibid.*, para. 57.

<sup>4</sup> See Supreme Court of Namibia, *T. Namunjepo v. Commanding Officer Windhoek Prison*, 1999.

<sup>5</sup> Amnesty International, *Stopping the torture trade*, AI index: ACT/40/002/2001, 26 February 2001.

<sup>6</sup> Information based on research carried out by the Omega Foundation and shared with the Special Rapporteur during the International Expert Meeting on Security Equipment and the Prevention of Torture.

<sup>7</sup> Amnesty International, *op. cit.*, p. 3.

<sup>8</sup> European Parliament resolution on the Council's Second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (13177/1/2000 - C5-0111/2001 - 2001/2050(COS)).

<sup>9</sup> United States of America, Bureau of Industry and Security (United States Department of Commerce), Foreign Police Report, chapter 2 "Crime Control/Human Rights". See <http://www.bxa.doc.gov/PRESS/2001/ForeignPolicyReport/Chapter2.html> (10 October 2002).

<sup>10</sup> The various laws referred to in this excerpt may be found on the following web site: <http://www.admin.ch/ch/f/rs/rs.html> (23 October 2002).

**Annex I\***



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.12.2002  
COM(2002) 770 final

Proposal for 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**

(presented by the Commission)

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### **EXPLANATORY MEMORANDUM**

- (1) The objective of the attached proposal is to set up a specific trade regime covering certain equipment and products which could be used for torture and other cruel, inhuman or degrading treatment or punishment. The purpose of a regime of this kind is to contribute to the prevention of the violation of the fundamental human right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. This is a key aim of the European Union, as underlined in the Guidelines to the EU Policy on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by Council (General Affairs) on 9 April 2001. These Guidelines make clear the EU position on the prevention of the use and production of, and trade in, such equipment.
- (2) These Guidelines also make the point that the prohibition of cruel, inhuman or degrading punishment imposes clear limits on the use of the death penalty. As regards the latter, the Council adopted Guidelines on the EU Policy towards Third Countries on the Death Penalty on 29 June 1998.
- (3) The International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Charter of Fundamental Rights of the European Union show that no exceptions can be made to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.
- (4) The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is part of the public morals of the international community. The proposed regime restricts trade with a view to preventing violations of that prohibition in cases where such violations are likely to occur, and is therefore necessary to protect public morals.
- (5) The proposed regime consists of two components. The first component is a ban on all trade in equipment which has no, or virtually no, practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (6) The second component allows the competent authorities to control trade in listed equipment and products, which could be used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but which also has legitimate uses. The competent authorities should impose any conditions they deem appropriate to prevent the equipment and products being used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. When doing so, they should of course take into account all relevant factors, including reports on any occurrences in the country of destination of torture and other cruel, inhuman or degrading treatment or punishment.
- (7) Accordingly, the list of equipment consists of two parts. Annex I comprises both equipment which has no, or virtually no, practical use other than for the purpose of capital punishment, and equipment which has in fact no, or virtually no, practical use other than for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.

- (8) Annex II comprises equipment and products which could be used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment, which also has other, legitimate uses. In order to avoid unnecessarily cumbersome and costly procedures, Annex II is limited to equipment and products which have been designed in such a way that it could easily be abused for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, e.g. because it is capable of inflicting severe pain or injury on human beings, and to equipment and products that are used for law enforcement purposes, i.e. which are intended for use by law enforcement officers and similar professionals.
- (9) The proposed Regulation also imposes restrictions on services relating to equipment included in the list and on brokering activities. However, it does not restrict trade in equipment and products not included in the relevant list.
- (10) In order to take technological developments into account, the list of equipment and products should be kept under review. In this regard, particular attention will have to be given to law enforcement equipment that is presented as "non-lethal", which could be more harmful than claimed by its manufacturer and therefore lend itself to abuse for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (11) The Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, adopted by the Council on 9 April 2001, state that the EU will urge third countries to "prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment". The Commission considers that the EU itself should take the very measures that it urges third countries to take. To that end, it proposes to impose restrictions on trade with third countries in equipment and products which could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment.
- (12) The proposed Regulation does not impose any restrictions on the use, production, marketing and sales within the internal market of the equipment and products concerned. The Commission encourages Member States to take supplementary measures, especially on production of such equipment and products, and expects that they do so in the short term.
- (13) Finally, it should be noted that the proposed Regulation neither prejudices the export control regime concerning dual-use goods (Council Regulation (EC) No 1334/2000) and the control regime concerning firearms (Council Directive 91/477/EC, which provides, *inter alia*, that Member States shall intensify controls on the possession of weapons at external borders), nor precludes the imposition of export prohibitions on other grounds, e.g. in order to prevent and condemn internal repression in a third country (e.g. Council Regulations (EC) No 1081/2000 concerning Myanmar/Burma and No 310/2002 concerning Zimbabwe).

Proposal for 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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Whereas:

- (1) Pursuant to Article 6 of the Treaty on European Union respect for human rights and fundamental freedoms constitutes one of the principles common to the Member States. In view of this the Community resolved in 1995 to make respect for human rights and fundamental freedoms an essential element of its relations with third countries. It was decided to insert a clause to that end in any new trade, co-operation and association agreement of a general nature that it concludes with third countries.
- (2) Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms all lay down an unconditional, comprehensive prohibition on torture and other cruel, inhuman or degrading treatment or punishment. Other provisions, in particular the United Nations Declaration Against Torture<sup>2</sup> and the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, place an obligation on States to prevent torture.
- (3) Article 2(2) of the Charter of Fundamental Rights of the European Union<sup>3</sup> prohibits executions and condemnations to the death penalty. On 29 June 1998, the Council approved "Guidelines on EU Policy towards Third Countries on the Death Penalty" and resolved that the European Union would work towards the universal abolition of the death penalty.
- (4) Article 4 of the Charter of Fundamental Rights of the European Union prohibits torture and inhuman or degrading treatment and punishment. On 9 April 2001, the Council approved "Guidelines to the EU Policy toward Third Countries, on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." These guidelines refer to both the adoption of the EU Code of Conduct on Arms Exports in 1998, and the prospective introduction of controls on the exports of paramilitary equipment, as examples of

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> Resolution 3452 (XXX) of 9.12.1975 of the General Assembly of the United Nations.

<sup>3</sup> OJ C 364, 18.12.2000, p. 1.

measures to work effectively towards the prevention of torture and other cruel, inhuman or degrading treatment or punishment. These guidelines also provide for third countries to be urged to prevent the use and production of, and trade in, equipment designed for torture or other cruel, inhuman or degrading treatment or punishment. They also make the point that the prohibition of cruel, inhuman or degrading punishment imposes clear limits on the use of the death penalty.

- (5) In its Resolution on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 25 April 2001 and supported by the EU Member States, the United Nations Commission on Human Rights, called upon United Nations Members to take appropriate steps, including legislative measures, to prevent and prohibit, inter alia, the export of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment. This point was confirmed by a Resolution adopted on 16 April 2002.
- (6) On 3 October 2001, the European Parliament adopted a Resolution<sup>4</sup> on the Council's second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, urging the Commission to act swiftly to bring forward an appropriate Community instrument banning the promotion, trade and export of police and security equipment whose use is inherently cruel, inhuman or degrading, and to ensure that that Community instrument would suspend the transfer of police and security equipment whose medical effects are not fully known, and of such equipment where its use in practice has revealed a substantial risk of abuse or unwarranted injury.
- (7) It is therefore appropriate to lay down Community rules on trade with third countries in equipment and products which could be used for the purpose of capital punishment and in equipment and products which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. These rules are instrumental in promoting respect for human life and for fundamental human rights, and thus serve the purpose of protecting public morals. These rules should ensure that Community economic operators do not derive any benefits from trade which either promotes or otherwise facilitates the implementation of policies on capital punishment or on torture and other cruel, inhuman or degrading treatment or punishment, which are not compatible with the relevant EU Guidelines, the Charter of Fundamental Rights of the European Union and international conventions and treaties.
- (8) For the purpose of this Regulation, it is considered appropriate to apply the definitions of torture and other cruel, inhuman or degrading treatment or punishment laid down in the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These definitions should be interpreted taking into account the case law on the interpretation of the corresponding terms in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

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<sup>4</sup> OJ C 87 E, 11.4.2002, p. 136.

- (9) It is considered necessary to prohibit exports and imports of equipment which has no, or virtually no, practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. In this regard, it should be noted that Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>5</sup> prohibits the use of chains and irons as restraints.
- (10) It is also necessary to impose controls on exports of certain equipment and products which could be used not only for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, but also for other, legitimate purposes. These controls should apply to equipment that has been designed in such a way that it could easily be abused for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment, and to equipment and products that are used for law enforcement purposes.
- (11) As regards law enforcement equipment, it should be noted that Article 3 of the Code of Conduct for Law Enforcement Officials<sup>6</sup> provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, provide that law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.
- (12) In view of this, those Basic Principles advocate the development of non-lethal incapacitating weapons for use in appropriate situations, while admitting that the use of such weapons should be carefully controlled. In this context, certain equipment traditionally used by the police for self-defence and riot-control purposes has been modified in such a way that it can be used to apply electric shocks and chemical substances to incapacitate persons. There are indications that, in several countries, such weapons are abused for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (13) Those Basic Principles stress that law enforcement officials should be equipped with equipment for self-defence. Therefore, this Regulation should not apply to trade in traditional equipment for self-defence, such as shields.
- (14) This Regulation should also apply to trade in the chemical substances used to incapacitate persons, including tear gases and riot control agents.
- (15) It should also be noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners<sup>7</sup> provide that instruments of restraint must never be applied as a punishment and that such instruments of restraint may only be used either as a precaution

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<sup>5</sup> Approved by Resolutions 663 C (XXIV) of 31.7.1957 and 2076 (LXII) of 13.5.1977 of the Economic and Social Council of the United Nations.

<sup>6</sup> Resolution 34/169 of 17.12.1979 of the General Assembly of the United Nations.

<sup>7</sup> Approved by Resolutions 663 C (XXIV) of 31.7.1957 and 2076 (LXII) of 13.5.1977 of the Economic and Social Council of the United Nations.

against escape during a transfer, on medical grounds as directed by a medical officer, or, if other methods of control fail, in order to prevent a prisoner from injuring himself or others, or from damaging property.

- (16) The Guidelines to the EU Policy toward Third Countries, on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provide, inter alia, that the Heads of Mission in third countries will include in their periodic reports an analysis of the occurrence of torture and other cruel, inhuman or degrading treatment or punishment in the State of their accreditation, and the measures taken to combat it. The competent authorities should take these reports and similar reports made by relevant international organisations, into account when deciding on requests for authorisations. Such reports should also describe any equipment used in third countries for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.
- (17) In order to contribute to the abolition of the death penalty in third countries and to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, it is considered necessary to impose restrictions on the provision to third countries of services pertaining to the operation and use of all equipment subject to this Regulation. For the same reason, restrictions should also be imposed on the provision of services which promote sales of equipment and products subject to this Regulation, such as brokerage, irrespective of whether the equipment concerned has been, is or will be in free circulation in the territory of the Community at any material time.
- (18) The measures of this Regulation are intended to prevent both capital punishment and torture and other cruel, inhuman or degrading treatment or punishment in third countries. They comprise restrictions on trade with third countries in equipment that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment. It is not considered necessary to establish similar controls on transactions within the Community as, in the Member States, capital punishment does not exist and there are sufficient safeguards in place to prevent torture and other cruel, inhuman or degrading treatment or punishment.
- (19) The Guidelines to the EU Policy toward Third Countries, on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment state that, in order to meet the objective of taking effective measures against torture and other cruel, inhuman or degrading treatment or punishment, measures to prevent the use and production of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment, should supplement these restrictions on trade with third countries.
- (20) In order to take into account new data and technological developments, the list of equipment and products covered by this Regulation should be reviewed within a reasonable period of time.
- (21) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.

- (22) The substantive measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>8</sup>. They should be adopted by use of the management procedure provided for in Article 4 of that Decision.
- (23) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive.
- (24) This act respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union,

HAS ADOPTED THIS REGULATION:

## **Chapter I**

### **Subject matter, scope and definitions**

#### *Article 1*

##### *Subject matter and scope*

This Regulation lays down Community rules governing trade with third countries in equipment and products that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, degrading or inhuman treatment or punishment, and in related services.

#### *Article 2*

##### *Definitions*

For the purposes of this Regulation:

- (a) "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from that person or from a third person information or a confession, punishing that person for an act that either that person or a third person has committed or is suspected of having committed, or intimidating or coercing that person or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to the proper application of lawful penalties, it being understood that for the purpose of this Regulation capital punishment is not a lawful penalty;

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<sup>8</sup> OJ L 184, 17.7.1999, p. 23.

- (b) "other cruel, inhuman or degrading treatment or punishment" means any act by which significant pain or suffering, whether physical or mental, is intentionally inflicted on a person, when such pain or suffering is inflicted either by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not, however, include pain or suffering arising only from, inherent in or incidental to the proper application of lawful penalties, it being understood that for the purpose of this Regulation capital punishment is not a lawful penalty;
- (c) "law enforcement authority" means any authority responsible for preventing, detecting, investigating, combating and punishing criminal offences, including, but not limited to, the police, any prosecutor, any judicial authority, any public or private prison authority and, where appropriate, any of the state security forces and military authorities;
- (d) "export transaction" means any export, re-export, sale, transfer, delivery or shipment, whether directly or indirectly, to any person, entity or body in a third country or to any person, entity or body for the purpose of any business carried on in, or operated from, the territory of any third country;
- (e) "import transaction" means any introduction of goods into the territory of the Community;
- (f) "competent authority" means an authority listed in Annex III.
- (g) "territory of the Community" means all the territories of the Member States to which the Treaty establishing the European Community is applicable, under the conditions laid down in that Treaty.

## **Chapter II**

### **Equipment which has no, or virtually no, practical use other than for the purposes of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment**

#### *Article 3* *Export prohibition*

1. With respect to equipment listed in Annex I, any export transaction shall be prohibited, irrespective of the origin of such equipment.

Any grant, sale, supply or transfer to any person, entity or body in a third country or to any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of any third country, whether directly or indirectly, of technical advice, assistance or training related to the functioning, use, production, composition or transformation of equipment listed in Annex I, shall be prohibited.

The provision of brokering and similar activities with a view to facilitating or promoting any export transaction concerning such equipment, shall be prohibited.

2. By way of derogation from paragraph 1, a competent authority may authorise an export transaction with respect to equipment listed in Annex I, and the provision of related services, if it is demonstrated that, in the third country to which the equipment, will be exported, such equipment will be used for the exclusive purpose of public display in a museum in view of its historic significance.

*Article 4*  
*Import prohibition*

1. With respect to equipment listed in Annex I, any import transaction shall be prohibited, irrespective of the origin of such equipment.

Any grant, sale, supply or transfer to any person, entity or body in the Community or to any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of the Community, whether directly or indirectly, of technical advice, assistance or training related to the functioning, use, production, composition or transformation of equipment listed in Annex I, shall be prohibited.

The provision of brokering and similar activities with a view to facilitating or promoting any import transaction concerning such equipment, shall be prohibited.

2. By way of derogation from paragraph 1, a competent authority may authorise an import with respect to equipment listed in Annex I, and the provision of related services, if it is demonstrated that, in the Member State of destination, such equipment will be used for the exclusive purpose of public display in a museum in view of its historic significance.

### **Chapter III**

## **Equipment and products that could be used for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment**

*Article 5*  
*Export authorisation requirement*

1. For any export transaction concerning equipment and products listed in Annex II, an authorisation shall be required, irrespective of the origin of such equipment.
2. With respect to equipment and products listed in Annex II, an authorisation shall be required for the following activities:

- (a) negotiating or arranging a contract or agreement concerning the purchase, transfer, delivery or shipment of such equipment, if
  - (i) such contract or agreement would be concluded either by or on behalf of a person, entity or body in a third country, or by or on behalf of any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of any third country,
  - (ii) such contract or agreement would require that equipment listed in Annex II be put at the disposal of that person, entity or body, and
  - (iii) the person, entity or body engaging in brokering or similar activities is established in the territory of the Community;
- (b) granting, selling, supplying or transferring, whether directly or indirectly, technical advice, assistance or training related to the functioning, use, production, composition or transformation of such equipment, to any person, entity or body in a third country or to any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of any third country.

*Article 6*  
*Applications for authorisations*

1. An authorisation for export transactions and activities referred to in Articles 5(1) and 5(2)(b), may be granted only by the competent authority of the Member State where the exporter, seller, service provider or transferring party is established.

An authorisation for activities referred to in Article 5(2)(a), may be granted only by the competent authority of the Member State where the negotiating or arranging person, entity or body is established.

2. Applicants shall supply the competent authority with all relevant information on the activities for which an authorisation is required. For export transactions this shall include, in particular :
  - (a) a precise statement on the country of destination, the end-user and the intended end-use; and
  - (b) full information on the shipment route and intermediaries.

The competent authority may request any additional information it considers necessary in order to make a decision on the application.

3. An authorisation may be subject to such requirements and conditions as the competent authority deems appropriate in order to prevent the equipment concerned being used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment, such as an obligation to provide a statement signed by the end-user or acceptance of a commitment not to re-export.

4. Without prejudice to Article 14(2), the competent authority shall make a decision on the application for an authorisation within two months. It shall without delay communicate its decision to the applicant and, where appropriate, to the Member State in whose territory the export declaration will be presented.
5. Unless an authorisation for an export transaction stipulates otherwise, such authorisation implies an authorisation for the applicant and for those entering into contractual relations with the applicant, to sell, transfer, deliver and ship the equipment referred to in the request, to a specific person, entity or body in a third country.
6. Authorisations shall be valid throughout the Community. The period of validity of an authorisation shall be six months, unless the competent authority decides that this period must be shorter.

#### *Article 7*

##### *Decisions on authorisations for export transactions*

Subject to Articles 8 to 11, decisions on applications for authorisation for export transactions concerning any equipment and products listed in Annex II shall be taken by the competent authority on a case by case basis, taking into account all relevant considerations, including the enforcement of restrictions on the transfer of the equipment concerned, if any, by the country of destination, and the acceptance of international obligations and commitments in this regard.

#### *Article 8*

##### *Criteria for granting export authorisations for end-use by parties other than law enforcement authorities*

As regards export transactions concerning equipment and products listed in Annex II that is destined for end-users other than law enforcement authorities, a competent authority shall refrain from granting an authorisation, if it is not satisfied that all the following conditions are met:

- (a) the end-user needs such equipment for a legitimate purpose;
- (b) the end-user will effectively use this equipment for such purpose;
- (c) the equipment will not be sold, transferred or delivered by the end-user to any other person, entity or body, including in particular law enforcement authorities, in a third country where torture or other cruel, inhuman or degrading treatment or punishment is reported to occur.

#### *Article 9*

##### *Criteria for granting export authorisations for end-use by law enforcement authorities*

As regards export transactions concerning equipment and products listed in Annex II destined for law enforcement authorities, a competent authority shall refrain from granting an authorisation, if

- (a) there are indications that torture or other cruel, degrading or inhuman treatment or punishment has been or is being practised by the law enforcement authority concerned, and
- (b) the competent authority is not satisfied that the third country concerned:
  - (i) has prohibited torture and other cruel, degrading or inhuman treatment or punishment in law, including criminal law,
  - (ii) is bringing the persons responsible for torture and other cruel, degrading or inhuman treatment or punishment to justice, and
  - (iii) is imposing, in respect of such acts, penalties other than capital punishment, which are both dissuasive and proportionate to the nature of the acts committed.

It shall refrain from granting an authorisation if it has reason to conclude that the equipment concerned is likely to be used for judicial corporal punishment.

#### *Article 10*

##### *Additional criteria for granting export authorisations for end-use by law enforcement authorities interrogating individuals*

As regards export transactions concerning equipment and products listed in Annex II destined for law enforcement authorities interrogating individuals, a competent authority shall refrain from granting an authorisation, if

- (a) there are indications that torture or other cruel, degrading or inhuman treatment or punishment have occurred in the third country concerned during interrogations, and
- (b) the competent authority is not satisfied that the third country concerned has ensured that statements obtained through torture and other cruel, inhuman or degrading treatment or punishment shall not be invoked as evidence in any proceedings, except against a person accused of such acts as evidence that the statement was made.

#### *Article 11*

##### *Additional criteria for granting export authorisations for end-use by law enforcement authorities detaining individuals*

As regards export transactions concerning equipment and products listed in Annex II destined for law enforcement authorities detaining individuals, a competent authority shall refrain from granting an authorisation, if

- (a) there are indications that torture or other cruel, degrading or inhuman treatment or punishment has occurred in a detention centre or prison which either is being managed by, or operates under the authority or supervision of, the law enforcement authority concerned, and

- (b) the competent authority is not satisfied that the third country concerned is both bringing the persons responsible for torture and other cruel, degrading or inhuman treatment or punishment committed in detention centres or prisons to justice, and imposing penalties other than capital punishment, which are both dissuasive and proportionate to the nature of the acts committed.

*Article 12*

*Authorisations for export of services*

1. A competent authority shall refrain from granting an authorisation for the activities referred to in Article 5(2)(a), if the export transactions or the provision of services implementing the contract or agreement which the applicant intends to negotiate or arrange, would not be authorised in accordance with this Regulation, assuming, where necessary, that such implementing export transaction or provision of services would be subject to the jurisdiction of the Community.
2. A competent authority shall refrain from granting an authorisation for the activities referred to in Article 5(2)(b), if the equipment to which the services relate, would not be authorised for export from the Community to the end-user concerned, assuming, where necessary, that such export transaction would be subject to the jurisdiction of the Community.

## **Chapter IV**

### **General and final provisions**

*Article 13*

*Amendment of data regarding competent authorities*

The data regarding competent authorities in Annex III shall be amended by the Commission on the basis of information supplied by the Member States.

*Article 14*

*Exchange of information*

1. The Commission and the Member States shall inform each other of the measures taken under this Regulation and supply each other with any relevant information at their disposal in connection with this Regulation, in particular
  - (a) information on authorisations granted and refused;
  - (b) information on new law enforcement equipment, including test reports;
  - (c) findings and reports on the policies and practices of third countries concerning capital punishment and torture and other cruel, inhuman or degrading treatment;

- (d) information in respect of violation and enforcement problems and judgements handed down by national courts.
2. A competent authority, which receives an application for an authorisation referred to in Article 6, shall provide a summary of the application to the competent authorities of the other Member States and the Commission within two weeks of receipt of the application. It shall inform them of the grounds on which it intends to either reject the application or grant an authorisation, and of any conditions that it considers appropriate.

If a reasoned objection is raised by a Member State or the Commission within two weeks of receipt of the summary of the application, the competent authority concerned may make a new proposal within one week.

If the competent authority fails to make a new proposal, or if a reasoned objection is raised by a Member State or by the Commission in respect of any new proposal within one week, the decision on authorisation shall be taken by the Commission in accordance with the procedure referred to in Article 16(2).

#### *Article 15* *Report*

Each competent authority shall make an activity report to the Commission, providing information on the number of applications received, on the equipment, products and countries concerned by these applications, on the decisions it has taken on these applications, on interpretation issues that have arisen, and on any organisational or other problems it has faced. An activity report shall be made for each period of twelve months.

#### *Article 16* *Committee*

1. The Commission shall be assisted by the committee on common rules for exports of products, instituted by Article 4(1) of Regulation (EEC) No 2603/1969.<sup>9</sup>
2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 10 working days.

3. The Committee shall adopt its rules of procedure.

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<sup>9</sup> OJ L 324, 27.12.1969, p. 25.

*Article 17*  
*Penalties*

1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. The Member States shall notify those provisions to the Commission by 30 April 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

*Article 18*  
*Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...]

*For the Council*  
*The President*

**ANNEX I****List of equipment referred to in Articles 3 and 4**

*Equipment which has no, or virtually no, practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.*

<u>CN code</u>	<u>Description</u>
<i>ex 4421 90 98</i>	Gallows and guillotines
<i>ex 8208 90 00</i>	
<i>ex 8543 89 95</i>	Electric chairs designed or modified for the purpose of execution of human beings (output at least 1 000 V)
<i>ex 9401 79 00</i>	
<i>ex 9401 80 00</i>	
<i>ex 9402 10 00</i>	
<i>ex 9402 90 00</i>	
<i>ex 9406 00 39</i>	Air-tight vaults, made of e.g. steel and glass, designed or modified for the purpose of execution of human beings by the administration of a lethal gas
<i>ex 9406 00 90</i>	
<i>ex 8413 81 90</i>	Automatic drug injection systems designed or modified for the purpose of execution of human beings by the administration of a lethal chemical substance
<i>ex 9018 90 50</i>	
<i>ex 9018 90 60</i>	
<i>ex 9018 90 85</i>	
<i>ex 8543 89 95</i>	Electric-shock belts designed or modified for restraining human beings by the administration of electric shocks equal to or exceeding 50 000 V
<i>ex 7326 90 97</i>	Leg-irons, gang-chains and shackles, designed for restraining human beings, <i>except</i> handcuffs for which the overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, does not exceed 240 mm when locked
<i>ex 8301 50 00</i>	
<i>ex 3926 90 99</i>	
<i>ex 7326 90 97</i>	Individual cuffs or shackle bracelets, designed for restraining human beings, having a minimum internal perimeter exceeding 190 mm when fully locked
<i>ex 8301 50 00</i>	
<i>ex 3926 90 99</i>	
<i>ex 7326 90 97</i>	Thumb-cuffs and thumb-screws, including serrated thumb-cuffs
<i>ex 8301 50 00</i>	
<i>ex 3926 90 99</i>	
	Components designed or modified for any of the above

## ANNEX II

### List of equipment and products referred to in Article 5

*Equipment and products that could be used for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment.*

<u>CN code</u>	<u>Description</u>
<i>ex</i> 9401 61 00	Restraint chairs and shackle boards
<i>ex</i> 9401 69 00	
<i>ex</i> 9401 71 00	
<i>ex</i> 9401 79 00	
<i>ex</i> 9402 90 00	
<i>ex</i> 9403 20 91	
<i>ex</i> 9403 20 99	
<i>ex</i> 9403 50 00	
<i>ex</i> 9403 70 90	
<i>ex</i> 9403 80 00	
<i>ex</i> 8543 89 95	
<i>ex</i> 9304 00 00	
<i>ex</i> 8424 20 00	Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating chemical substance such as tear gas, OC (oleoresin capsicum or pepper spray) and PAVA (pelargonic acid vanillylamide, synthetic pepper spray)
<i>ex</i> 9304 00 00	
	Components specially designed or modified for any of the above
<i>ex</i> 2926 90 95	$\alpha$ -Bromophenylacetonitrile ( $\alpha$ -bromobenzyl cyanide) (CA) (CAS 5798-79-8)
<i>ex</i> 2926 90 95	(2-chlorobenzylidene)malononitrile (o-chlorobenzal malononitrile) (CS) (CAS 2698-41-1)
<i>ex</i> 2914 70 90	2-chloroacetophenone (Phenylacetyl chloride) (CN) (CAS 532-27-4)
<i>ex</i> 2934 99 90	Dibenz-[b,f]-[1,4]oxazepine (CR) (CAS 257-07-8)
<i>ex</i> 2924 29 95	Pelargonic acid vanillylamide (PAVA) or synthetic pepper spray (CAS 2444-46-4)
<i>ex</i> 2939 99 90	Oleoresin capsicum (OC) or pepper spray (CAS 8023-77-6)

## ANNEX III

### List of competent authorities referred to in Article 6 (to be completed by the Member States)

## **Annex II to main document**

### **RECOMMENDATIONS OF AMNESTY INTERNATIONAL<sup>a</sup>**

1. Amnesty International has called upon Governments to:

(a) Ban the use of police and security equipment whose use is inherently cruel, inhuman or degrading. Ban the manufacture and promotion of this equipment and its trade to other countries. This should include: leg irons, electro-shock stun belts and inherently painful devices such as serrated thumbcuffs;

(b) Suspend the use of equipment whose medical effects are not fully known, pending the outcome of a rigorous and independent inquiry into its effects. This should include equipment such as high-voltage electro-shock weapons. International transfers should be suspended pending the results of the inquiry;

(c) Conduct an independent and rigorous review of the use of equipment where its use in practice has revealed a substantial risk of abuse or unwarranted injury. Suspend the transfer of such equipment to other countries pending the results of the review. This should include equipment such as legcuffs, thumbcuffs, shackle boards, restraint chairs and pepper gas weapons;

(d) Introduce strict guidelines on the use of police and security equipment such as handcuffs and tear gas. Set up adequate monitoring mechanisms to keep the guidelines under review and to ensure that they are adhered to;

(e) Ensure that all relevant research on the safety of new law enforcement equipment and weapons is placed in the public domain before any decisions are taken on their deployment;

(f) Ensure that transfers of police and security equipment are allowed only if the Government of the country from which the transfer is made is satisfied that they will be used in accordance with proper guidelines. Introduce stringent controls on the export of such equipment to ensure that it will not be used to inflict torture or ill-treatment. Increase public accountability and transparency in the supply of such equipment;

(g) Ensure that the training of military, security and police personnel of another country does not include the transfer of skills, knowledge or techniques likely to lend themselves to torture or ill-treatment in the recipient country. The practical application of relevant human rights standards and humanitarian law should be fully integrated into such training programmes;

(h) Establish objective procedures to screen all potential participants in the training of military, security and police personnel of another country to ensure that those who have been involved in serious human rights violations are prevented from participating unless they have been brought to justice and effective measures taken for their rehabilitation;

(i) Make public information on all Government-sponsored police, security and military training programmes for foreign personnel, in particular the individuals and units trained, the nature of the training, and the monitoring mechanisms put in place. Establish mechanisms to rigorously monitor the human rights impact of the training provided;

(j) Introduce legislation to control and monitor the activities of private providers of military, police and security services. Companies and individuals providing such 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. This should be granted in accordance with publicly available criteria based on international human rights standards and humanitarian law.

2. Amnesty International calls on all companies to:

(a) Immediately and permanently cease production, promotions and distribution of equipment whose use is inherently cruel, inhuman or degrading;

(b) Suspend the manufacture, promotion and transfer of all equipment whose medical effects are not fully known or where its use in practice has revealed a substantial risk of abuse or unwarranted injury, pending the outcome of a rigorous and independent review.

#### **Note**

<sup>a</sup> Amnesty International, *Stopping the Torture Trade*, AI index: ACT/40/002/2001, pp. 51-52.

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