United Nations

A/74/969

**General Assembly**

Distr.: General
28 July 2020

Original: English

**Seventy-fourth session**
Agenda item 70 (b)
**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

# Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards

## Report of the Secretary-General

*Summary*

In its resolution 73/304, the General Assembly requested the Secretary-General, with the provisions of resolution 72/163 in mind, to seek the views of Member States on the feasibility and possible scope of a range of options to establish common international standards for the import, export and transfer of goods used for (a) capital punishment, (b) torture or other cruel, inhuman or degrading treatment or punishment, and to submit a report on the subject to the Assembly at its seventy-fourth session. The present report is submitted pursuant to that request and was prepared on the basis of information provided by Member States.

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# I. Introduction

1. The present report was prepared pursuant to General Assembly resolution 73/304. In that resolution, the Assembly recognized that the absence of common international standards on the import, export and transfer of goods used for (a) capital punishment, (b) torture or other cruel, inhuman or degrading treatment or punishment contributes to the availability of these goods and enables such practices. It acknowledged the growing support across all regions for concluding an international instrument, negotiated on a non-discriminatory, transparent and multilateral basis, to establish such common international standards. The Assembly also acknowledged the importance of international trade and the need to ensure that the establishment of common international standards does not create barriers to international trade in other goods.

2. In paragraph 1 of resolution 73/304, the General Assembly requested the Secretary-General to seek the views of Member States on the feasibility and possible scope of a range of options to establish common international standards for the import, export and transfer of goods used for (a) capital punishment, (b) torture or other cruel, inhuman or degrading treatment or punishment, and to submit a report on the subject to the Assembly at its seventy-fourth session.

3. Accordingly, in March 2020, the Office of the United Nations High Commissioner for Human Rights, on behalf of the Secretary-General, addressed a note verbale to all Member States with a detailed questionnaire inviting them to share information on relevant regional and national legal frameworks and to express views on the type, feasibility and scope of common international standards for trade in the aforementioned goods. The present report is based on an analysis of the inputs submitted by 46 Member States.[1]

# II. Existing regional and national frameworks and other measures

4. Since 2002, in its yearly and then biennial resolutions on torture and other cruel, inhuman or degrading treatment or punishment, the General Assembly has been calling upon all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that is specifically designed to inflict torture or has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment.[2]

5. At the regional level, the European Union adopted Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (the European Union anti-torture

[1] Submissions were received from Albania, Andorra, Angola, Argentina, Austria, Azerbaijan, Belgium, Brazil, Canada, Colombia, Croatia, Cyprus, Czechia, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Indonesia, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Mongolia, the Netherlands, New Zealand, Norway, Pakistan, Paraguay, Poland, Portugal, Qatar, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom of Great Britain and Northern Ireland. The full text of the submissions is available on the website of the Office of the United Nations High Commissioner for Human Rights.

[2] See General Assembly resolutions 56/143, 57/200, 58/164, 59/182, 60/148, 61/153, 62/148, 63/166, 64/153, 65/205, 66/150 (in which the Assembly addressed import for the first time), 67/161, 68/156, 70/146, 72/163 and 74/143.

regulation).[3] The regulation is a legally binding instrument within the European Union and is directly applicable in all 27 States members of the European Union.[4] The Council of Europe, for its part, is in the process of developing a recommendation on the same subject, which will be based on the European Union anti-torture regulation.[5]

6. Some European Union member States have also adopted national laws, regulations and decrees to facilitate the implementation of the regulation, including through broader legislation such as the Foreign Commerce Act (2011) of Austria and the Strategic Goods Act (2012) of Estonia.[6]

7. The United Kingdom of Great Britain and Northern Ireland stated that the Export Control Order adopted in 2008 contained additional controls over and above those required under the European Union anti-torture regulation on the export and brokering of goods that have legitimate uses in law enforcement but that might be used for torture or other forms of ill-treatment. The United Kingdom noted that, while it had left the European Union, under the European Union (Withdrawal Agreement) Act 2020, the European Union anti-torture regulation remained directly applicable in the United Kingdom until the end of the transition period. The United Kingdom will retain the regulation in national law after the end of the transition period and the overall framework of the controls will remain the same. Norway noted that relevant European Union legislation was incorporated into the Agreement on the European Economic Area and implemented in national law.

8. Serbia indicated in its submission that it had adopted a decree on the export and import of certain goods which could be used for capital punishment, torture and other cruel, inhuman or degrading treatment or punishment. Other States, while they have not adopted specific legislation addressing such trade, have addressed some relevant matters in other legislative acts. Switzerland indicated that certain sectoral laws

[3] See the submissions from Austria, Belgium, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland. Slovakia indicated in its submission that the European Union anti-torture regulation consolidated various amendments to Council Regulation (EC) No. 1236/2005, which was adopted on 27 June 2005.

[4] See the submissions from Austria, Belgium, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

[5] See the submission from Switzerland.

[6] The instruments in question include the Foreign Commerce Act of Austria of 2011 governing the procedure and specifying, inter alia, the criminal offences necessary for the application of the regulation; the federal law of Belgium of 8 June 2006 regulating economic and individual activities involving weapons; the regulation of Croatia concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (Official Gazette No. 100/2013) and amendments thereto (Official Gazette No. 17/2020); Law Coll. 38/2008 of Czechia on Import and Export of Goods Which Could Be Used for Capital Punishment and Torture; the Strategic Goods Act of Estonia of 1 January 2012; Decree No. 2011-978 of France of 16 August 2011 on the export and import of certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment; S.I. No. 455/2019 of Ireland – European Communities (Control of Trade in Goods that May Be Used for Torture) Regulations 2019; Cabinet Regulation No. 927 of Latvia on arrangements for issuing export and import authorizations for goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment; Act No. 474/2007 Coll. of Slovakia on trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment; and the decree of Slovenia on the implementation of Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (Official Gazette No. 38/19). Portugal reported that penalties were provided for in article 97-A of the General Regime of Tax Infractions, established under Law 15/2001 of 5 June 2001.

contained relevant provisions relating, in particular, to the possession of certain objects that could be used for torture or other forms of ill-treatment; chemicals that could be used for capital punishment; war material; and the control of goods that could be used for civilian and military purposes.[7] Indonesia stated that trade in social policing and riot control goods was regulated pursuant to Indonesian Law 16 of 2012 on the Defence Industry. Similarly, Argentina,[8] Canada,[9] Mongolia[10] and New Zealand[11] indicated that trade in goods relevant to the subject matter was addressed under broader legislative acts. Angola, Brazil and Qatar reported in their submissions that they had not adopted any national regulations concerning trade in goods used for capital punishment, torture or other forms of ill-treatment.

9. According to the information received, the implementation of national laws and regulations in some countries is carried out by different institutions, including ministries or departments of foreign affairs, economic affairs, trade, business, interior, health and customs affairs, and is often the responsibility of more than one institution.[12]

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[7] See the submission from Switzerland: arms legislation (Weapons Act, *Recueil systématique* (RS) 514.54; Weapons Ordinance, RS 514.541); legislation relating to medicines that may be intended for capital punishment (Therapeutic Products Act, RS 812.21; Medicinal Products Licensing Ordinance, RS 812.212.1; Federal Act on Narcotics and Psychotropic Substances, RS 812.121); legislation on war material (Federal Act on War Material, RS 514.51); and legislation on the control of goods that can be used for civilian and military purposes (Federal Act on the Control of Dual-Use Goods, Specific Military Goods and Strategic Goods, RS 946.202).

[8] See the submission from Argentina. The general national regulations cover goods such as chemical substances or weapons that are subject to a prohibition of a non-economic nature in the absence of prior authorizations.

[9] See the submission from Canada. There are no explicit provisions in Canadian law that specifically address trade in items specifically designed for (a) capital punishment and (b) torture or other cruel, inhuman or degrading treatment or punishment. Canada maintains significant controls on the import and export of certain weapons through the Export and Import Permits Act and the Customs Tariff Act. The Export and Import Permits Act contains a reference to the Criminal Code for the definition of what constitutes prohibited weapons and devices. However, a prohibited weapon or device is not necessarily specifically designed to inflict torture or cruel, inhuman or degrading treatment or punishment.

[10] See the submission from Mongolia. Mongolia adopted Resolution No. 5 of 1998 approving lists of goods for which cross-border movement is prohibited and goods subject to non-tariff restrictions. There are also specific provisions in other national laws prohibiting or restricting the import and export of goods that are not included in the resolution, such as the Law on the Police Service of 2017 and the Law on Medicines and Medical Devices of 2010.

[11] See the submission from New Zealand. The Strategic Goods List covers the export of goods comprising conventional arms or their related parts or ammunition and the export of goods broadly relevant to the subject matter, such as technology that could be used to facilitate arrest. The possibility of any items on the Strategic Goods List being used to perpetrate human rights abuses, such as torture, is a specific factor to be taken into account in the risk assessment that is required to be conducted before the authorization of any export of such items.

[12] In Austria, the entity responsible is the Federal Ministry for Digital and Economic Affairs; in Belgium, the Federal Public Service for the Economy and the Belgian Customs; in Colombia, the Ministry of Commerce, Industry and Tourism and the National Directorate of Taxes and Customs; in Croatia, the Ministry of Foreign and European Affairs, Export Control Division; in Cyprus, the Imports/Exports Licensing Section, Trade Service, Ministry of Energy, Commerce and Industry; in Czechia, the Ministry of Industry and Trade, Licensing Administration, and the Ministry of Foreign Affairs; in Denmark, the Danish Business Authority and the Ministry of Justice; in Ecuador, the Ministry of Productivity, Foreign Trade, Industries and Fisheries through the Committee on Foreign Trade; in Estonia, the Strategic Goods Commission within the Ministry of Foreign Affairs; in Finland, the Ministry of the Interior, the Ministry of Social Affairs and Health, the Ministry of Foreign Affairs, the Customs, the National Police Board, the Finnish Safety and Chemicals Agency and the Finnish Medicines Agency; in France, the General Directorate of Customs and Indirect Taxes (Ministry of Public Action and Accounts), although it will soon be the dual-use goods department (Ministry of the Economy and Finance); licensing is

10. A number of States indicated that their national laws provided for penalties for breaches of relevant regulations, ranging from fines to lengthy prison terms for offences committed with aggravating circumstances.[13] In its submission, Germany stated that penalties for wilful violations of the European anti-torture regulation included imprisonment for a term of up to five years, while the term could be increased to as much as 15 years for serious cases. Several States indicated that there had been no investigations, prosecutions or convictions for breaches of laws regulating trade in goods used for capital punishment, torture or other forms of ill-treatment.[14] Other States indicated that they had no relevant information or did not collect such data.[15]

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subject to the prior approval of the Ministry for Europe and Foreign Affairs, the Ministry of the Armed Forces, the Ministry of the Interior and, where relevant, the Ministry of Culture; in Germany, the Federal Office for Economic Affairs and Export Control; in Greece, the Ministry of Development and Investments, Directorate for Trade Regimes and Defence Instruments; in Ireland, the Department of Business Enterprise and Innovation; in Italy, the Ministry of Foreign Affairs and International Cooperation – National Authority – Military Goods Licence Unit; in Latvia, the Division of Export Control of Strategic Goods of the Ministry of Foreign Affairs and the customs authority; in Lithuania, the Police Department under the Ministry of the Interior and the State Medicines Control Agency under the Ministry of Health; in Luxembourg, the Office for Export, Import and Transit Controls in the Ministry of the Economy; in Malta, the Commerce Department within the Ministry for the Economy, Investment and Small Business; in Mongolia, the General Customs Authority; in the Netherlands, the Ministry of Foreign Affairs; in Norway, the Ministry of Foreign Affairs; in Poland, the Ministry of Economic Development; in Romania, the Trade Policy Directorate, Ministry of the Economy, Energy and Business Environment; in Serbia, the Ministry of Trade, Tourism and Telecommunications and the Ministry of Finance, Customs Administration; in Slovakia, the Ministry of the Economy; in Slovenia, the Ministry of Economic Development and Technology; in Spain, the Secretariat of State for Trade in the Ministry of Industry, Trade and Tourism; in Sweden, the National Board of Trade; and in the United Kingdom of Great Britain and Northern Ireland, the Department for International Trade and Her Majesty's Revenue and Customs.

[13] In Croatia, in respect of Regulation (EU) 2019/125, there are fines for administrative breaches and imprisonment for a term of six months to five years for breaches such as circumvention of customs control or illicit trade under the Penal Code of the Republic of Croatia. In Estonia, the Penal Code provides for a pecuniary punishment or imprisonment for a term of up to five years. If committed by a group or committed at least twice, a breach is punishable by imprisonment for a term of 2 to 10 years. The carriage of prohibited strategic goods or the provision of services relating to prohibited strategic goods (section $421^2$) is punishable by imprisonment for a term of 3 to 12 years. The same act, if committed by a group or committed at least twice, is punishable by imprisonment for a term of 5 to 20 years. In France, the penalty is a prison term of three years, a fine of between one and two times the value of the goods and confiscation of the goods, with heavier penalties if the offence is committed by an organized group. In Germany, penalties for wilful violations of Regulation (EU) 2019/125 include imprisonment for a term of up to 5 years, or up to 15 years in serious cases. Negligent violations can result in a fine of €500,000. Violations are investigated and prosecuted either by the public prosecutor's office or, in the case of negligent violations, by the customs authorities. In Greece, violations of Regulation (EU) 2019/125 can result in either the cessation of business activity for up to one year or a fine of up to €100,000. In Lithuania, breaches of Regulation (EU) 2019/125 are administrative offences; the penalty is a fine of up to €6,000, with confiscation of the goods. Penal sanctions consist of imprisonment for up to four years. In Slovakia, breaches of Regulation (EU) 2019/125 are a criminal or administrative offence. Penalties for violations of the regulation range from €16,560 to €33,120.

[14] Andorra, Croatia, Cyprus, Czechia, Finland (provided information only on prosecutions and convictions), Indonesia, Ireland, Italy, Latvia, Luxembourg, Malta (provided information only on prosecutions), Mexico, New Zealand, Poland, Portugal, Romania, Slovenia, Sweden and United Kingdom of Great Britain and Northern Ireland (provided information relating to the period since 2010). Belgium indicated that there had been no prosecutions or investigations in 2019.

[15] Argentina, Austria, Belgium (with regard to investigations), Denmark, France, Finland (with regard to investigations), Germany, Greece, Lithuania, Portugal, Slovakia and Spain.

11. In its submission, the Netherlands reported that it had investigated five cases in which companies claimed that they were not aware of the licence obligation under the European Union anti-torture regulation and one case in which a company claimed that it was not aware of the prohibition of trade in the goods listed in annex II to the regulation. The United Kingdom noted that the most recent prosecution was related to the trading of electric discharge weapons. Canada reported that there had been some convictions for the illegal import of electric shock weapons, electric shock devices and riot control agents.

# III. Possible scope of common international standards

12. In resolution 73/304, the General Assembly requested the Secretary-General to seek the views of Member States on the feasibility and possible scope of a range of options to establish common international standards. For the purpose of identifying the possible scope, Member States were asked to express their views on the scope and categories of goods that should be specifically identified under common international standards. They were also asked for their views on the extent to which the standards should provide for the prohibition and/or control of trade, the import, export and transfer of those goods and related activities, and on the need to establish a mechanism and criteria for conducting risk assessments.

## A. Scope and categories of goods

13. Several States[16] proposed that a distinction be drawn between three categories of goods:

(a) Goods that have no practical use other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment;

(b) Goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment;

(c) Goods that could be used for the purpose of capital punishment.

14. Other States suggested different distinctions. A number of States[17] proposed an additional distinction between goods that have no practical use other than for the purpose of capital punishment and goods that have no practical use other than for the purpose of torture or other forms of ill-treatment. France proposed that all goods related to capital punishment be merged in a single category. Czechia suggested only two categories: goods that have no practical use other than for the purpose of capital punishment, torture or other forms of ill-treatment; and goods that could be used for capital punishment, torture or other forms of ill-treatment. Mongolia made a similar suggestion. Indonesia disagreed with the inclusion of capital punishment in any list of goods. It argued that, owing to the various methods of capital punishment among countries, it would be difficult to reach unanimity regarding the inclusion of this category. It proposed that the focus should be on goods that would be of relevance to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[16] Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

[17] Albania, Andorra, Angola, Canada, Ecuador, Latvia, Mexico, Mongolia, New Zealand, Netherlands, Paraguay, Portugal, Serbia, Switzerland and United Kingdom of Great Britain and Northern Ireland.

15. Colombia noted the need to identify the goods to establish whether international commitments already existed with regard to some or all of the goods under consideration. Switzerland suggested that the term “practical use” should be clearly defined. Canada recommended focusing on categories of goods that represented the bulk of international trade. It noted that its own export control system classified items by their technical characteristics rather than by end use and, accordingly, suggested guidelines in which the technical characteristics of goods were outlined.

16. Member States were also invited to express their views on whether common international standards should include an exhaustive list of goods. The majority of States[18] indicated in their submissions that the list of goods under each category should be exhaustive. Some States noted that this would, among other things, ensure consistency in the application of controls and provide common guidelines for the handling of those goods and the development of national control lists.[19] France proposed that the lists of goods in annexes II, III and IV to the European Union anti-torture regulation could serve as examples.

17. Albania specifically proposed the inclusion of the following goods: guillotines; curved and sharp swords used for capital punishment by beheading; handcuffs for restraining individuals by anchoring them to a wall, floor or ceiling; chairs fitted with handcuffs or other devices for the purpose of restraint; wooden or iron tables and beds equipped with handcuffs or other devices for the purpose of restraint; shields with sharp metal rivets; sticks or rods with pins or sharp spikes fixed along their length; whips for torturing; and handcuffs. Pakistan proposed the control of trade in metal pellet ammunition and associated equipment. Ecuador noted that, even though the goods that could be used to exert psychological torture were more difficult to determine, efforts should be made to ensure that this type of torture did not remain invisible.

18. While agreeing that the list of goods should be exhaustive, Canada noted the importance of allowing for some flexibility so that States could control items as they deemed appropriate and in line with their national legislation and regulations. Similarly, Finland proposed an “open” category of goods referred to as comparable to such goods. Brazil noted that an exhaustive list would make trade control possible only if there was an appropriate fiscal classification of goods by a competent authority. It advised that any collective exercise on the fiscal classification of such goods should involve the expertise of the World Customs Organization. Similarly, Colombia noted that goods must be identified in the manner indicated in the Harmonized Commodity Description and Coding System of the World Customs Organization.

19. A number of States proposed that lists of goods be only indicative or illustrative. The United Kingdom noted that it would be difficult to reach consensus on the contents of a comprehensive and exhaustive list and suggested that such a list should not include items already subject to existing arms control regimes, nor should it disproportionately affect trade in legitimate medical products. It therefore suggested that a narrow list representing a minimum standard be considered as an option. Slovakia suggested that a combination of non-exhaustive lists and a descriptive definition of goods under each category could be more appropriate and effective. New Zealand and Ecuador also expressed a preference for an illustrative list, arguing that

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[18] Albania, Argentina, Austria, Belgium, Canada, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Indonesia (only in relation to goods used for torture or cruel, inhuman or degrading treatment or punishment), Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Paraguay, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden and Switzerland.

[19] Canada, Indonesia and United Kingdom of Great Britain and Northern Ireland.

an exhaustive list would remove valuable flexibility to meet the intended end goals of the initiative.

20. The majority of States[20] also indicated in their submissions that a mechanism for regular updating would be necessary in order to respond quickly when new goods that could be used for capital punishment, torture or other forms of ill-treatment emerged. Mongolia suggested that the lists be updated with recommendations from experts in human rights, international trade and law enforcement, and practitioners in chemical and medical fields. Pakistan suggested that such work be guided by impartial legal, technical, medical and scientific expertise and evidence. In addition, Paraguay proposed that an updating mechanism should include monitoring of the manufacture, trade and use of such goods, as well as their transit from one State to another.

## B. Prohibition and/or control of trade

21. The majority of States[21] agreed that it was necessary to prohibit rather than merely control trade in goods that have no practical use other than for the purpose of capital punishment, torture or other forms of ill-treatment. Several States[22] highlighted that exemptions should be provided to allow items of historical significance to be displayed in a museum. France noted that the European anti-torture regulation should serve as an example in that regard.

22. Several States[23] indicated in their submissions that control was necessary for goods that could be used for capital punishment, torture or other forms of ill-treatment, although Brazil noted that enforcing such control would be a great challenge. In the view of Canada, common international standards should include recommended measures to control trade in those goods, and States should be responsible for the domestic implementation of their own control list and system, in accordance with existing multilateral export control regimes. Switzerland suggested that the term “strict control”, as well as the scope of such control, should be clearly defined.

## C. Import, export and transfer of goods and related activities

23. General Assembly resolution 73/304 covers the import, export and transfer of goods. A number of other activities, however, are closely associated with, or linked

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[20] Albania, Argentina, Austria, Belgium, Canada, Croatia, Cyprus, Czechia, Denmark, Estonia, France, Germany, Greece, Indonesia (only in relation to goods used for torture or cruel, inhuman or degrading treatment or punishment), Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Mongolia, Netherlands, Paraguay, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden and Switzerland.

[21] Albania, Andorra, Austria, Belgium, Brazil, Canada, Croatia, Cyprus, Czechia, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Indonesia (only in relation to goods which have no practical use other than for the purpose of torture or other cruel, inhuman, or degrading treatment or punishment), Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Mongolia, Netherlands, New Zealand, Paraguay, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom.

[22] Germany, Lithuania, Netherlands, Serbia, Slovakia and United Kingdom.

[23] Albania, Andorra, Austria, Azerbaijan, Belgium, Croatia, Cyprus, Czechia, Denmark, Ecuador, Estonia, Finland, France, Germany, Greece, Indonesia, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mongolia, Netherlands, New Zealand, Paraguay, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland and United Kingdom of Great Britain and Northern Ireland.

to, imports, exports and transfers, and Member States were asked to indicate which of those activities they considered should be regulated.

24. Several States[24] proposed in their submissions that the international regulatory framework include brokering services, technical assistance, training in the use of regulated goods, promotion at trade fairs or exhibitions, and advertising. In addition, some States proposed the regulation of transit,[25] manufacturing and production of relevant goods.[26] Finland stated that the selling or purchasing of goods, including as part of a supply chain, should be covered. Albania proposed that the identification and/or registration, storage and administration of goods should be regulated activities. The United Kingdom suggested that activities linked to import, export and transfer should be regulated to the extent that they were directly related to, and clearly facilitated and enabled, trade in goods of which the import, export and transfer were also regulated. Slovenia noted the importance of ensuring that none of the activities led to violations of human rights or permitted economic operators to derive benefits from such violations.

25. Switzerland proposed that activities related to the movement of goods across borders, such as import, export, transit and brokerage, should be regulated as a priority, and that other activities should be considered only at a later stage. Similarly, Canada did not recommend focusing on domestic activities such as manufacturing, production and commercial marketing. New Zealand emphasized the need to be realistic in terms of the controls that States, especially small island States, could be expected to exercise over transnational activities such as transit and diversion. It noted that brokering was also a challenging issue and suggested focusing on activities more readily under complete national control. Indonesia suggested that any regulation of imports, exports and transfers of regulated goods or associated activities should take account of applicable laws in other areas, such as international trade law, international investment law and international environmental law. That was important in order to ensure that common international standards designed to prevent torture did not result in blanket discriminatory practices or the establishment of a barrier to trade.

26. Several States suggested that activities should be regulated in accordance with the categories of goods concerned. With regard to goods that have no practical use other than for the purpose of capital punishment, torture or other forms of ill-treatment, Germany, Lithuania, the Netherlands and Slovakia proposed the regulation of imports, training on the use of such goods, promotion at trade fairs or exhibitions, and the selling or purchasing of advertising. Angola proposed the prohibition of the production, sale, transport and receipt of such goods. Slovakia suggested that the manufacturing of such goods should also be regulated. Similarly, Ecuador proposed prohibiting the manufacture, use and marketing of goods in that category.

27. With regard to goods that could be used for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, Germany, Lithuania, the Netherlands and Slovakia submitted that the proposed international regulatory framework could include the export and transfer/transit of such goods, brokering services and the supply or acceptance of technical assistance related to such goods. Angola suggested that the sale, transport and receipt of such goods be controlled so as to keep a record of the buyer and of the use to be made of the goods. Paraguay recommended that the executive, through a competent authority, should

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[24] Austria, Belgium, Canada (mentioned technical assistance and training, and sharing technology), Croatia, Cyprus, Czechia, Denmark, Estonia, France, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Serbia, Slovenia, Spain and Sweden.

[25] Albania, Malta, Portugal, Serbia and United Kingdom of Great Britain and Northern Ireland.

[26] Ireland and Serbia.

authorize the import, export, manufacture, marketing and transit of such goods and exercise control over those activities.

## D. Need for a risk assessment mechanism and criteria for risk assessment

28. Member States were invited to indicate which risk assessment mechanisms and associated criteria should be considered for the regulation of goods that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

29. The United Kingdom emphasized that any risk assessment criteria should be clear and readily understood by all stakeholders and that any assessment should be conducted on a consistent and non-discriminatory basis, taking into account all relevant information and verifiable sources. Austria noted that any risk management mechanism should be in line with the Guiding Principles on Business and Human Rights. It also referred to the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises and the Organization's work on due diligence, which provided a useful tool not only for companies but also for policymakers when they were considering human rights risks and their mitigation.

30. New Zealand suggested drawing on the wide range of existing risk assessment mechanisms and criteria for dual-use goods. France and Ireland considered that the European Union anti-torture regulation provided useful criteria and a sound model. Switzerland suggested drawing on export control regimes such as the Wassenaar Arrangement, the Nuclear Suppliers Group, the Missile Technology Control Regime and the Australia Group. Canada suggested modelling the risk assessment mechanisms and criteria on those used in the Arms Trade Treaty. It noted that States could commit to applying the same standards as they applied for their existing export controls, or at least a standard that was no less rigorous.

31. Portugal also proposed that the risk assessment mechanism and risk criteria be very similar to those already in place for any other type of goods subject to restrictions and proposed that the risk of diversion of such goods be considered. New Zealand noted that diversion was a complex issue that should be avoided, and Brazil noted that it would hardly be feasible to control trade in goods that could be diverted.

32. Several States[27] agreed that goods that could be used for the purpose of capital punishment, torture or other forms of ill-treatment should be subject to an export authorization requirement. Such authorization should not be granted when there were reasonable grounds to believe that the goods might be used for that purpose by a law enforcement authority or any natural or legal person in the country to which they were exported. The United Kingdom referred to the specific criteria under the European anti-torture regulation. In accordance with those criteria, the competent authorities deciding on authorizations should take into account available international court judgments, findings of the competent bodies of the United Nations, reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and other relevant information, including available national court judgments, reports and other information prepared by civil society organizations.

33. Several States[28] agreed that the criteria for granting authorizations should also apply to the verification of the intended end use and the risk of diversion. Some

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[27] Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

[28] Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Greece, Italy, Latvia, Luxembourg, Malta, Poland, Romania, Slovenia, Spain and Sweden.

States[29] also suggested that the transit of goods be prohibited if the person executing the transit knew that any part of a shipment of such goods was intended to be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment in a third country. Similar authorization requirements were proposed by other States[30] in relation to technical assistance and brokering services.

34. Serbia specifically referred to the issuance of licences. It suggested that, for any export or import of goods that could be used for the purpose of torture and other forms of ill-treatment, a licence should be required, irrespective of the origin of the goods. In addition, Malta noted the need to assess the impact of free trade zones, given that they might serve as a route for escaping licensing requirements.

35. Slovakia also proposed the establishment of an international register or website for authorized importers/exporters with easily accessible information on the import, export and transport rules valid in each country. Colombia suggested the conclusion of a memorandum of understanding between States to create alliances or networks for the exchange of information on the use of goods and their origin and destination. Paraguay also proposed establishing a mechanism for States to share pertinent information on effective measures to address diversion, including information on illegal sources of supply or destinations used by organized groups engaged in diversion.

# IV. Feasibility and range of options for common international standards

36. Most of the 46 States that responded to the questionnaire supported the proposal to establish common international standards,[31] and a majority[32] were in favour of a legally binding instrument establishing measures to control and restrict trade in goods used for capital punishment, torture or other forms of ill-treatment. They indicated that only an international legally binding instrument could close the gap and put an end to the trade in those goods[33] and suggested that such an instrument could draw on the rules, principles and mechanisms established in the European Union anti-torture regulation.[34]

37. A number of States[35] suggested that the appropriate instrument would be an international treaty within the framework of the United Nations, while Paraguay was in favour of a regional agreement. Slovakia and Indonesia proposed the elaboration of an optional protocol to the Convention against Torture and Other Cruel, Inhuman

[29] Czechia, Germany, Lithuania, Netherlands and Slovakia.

[30] Germany, Lithuania, Netherlands, Serbia and Slovakia.

[31] Andorra, Angola, Austria, Canada, Croatia, Cyprus, Czechia, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Mexico, Mongolia, Netherlands, New Zealand, Pakistan, Poland, Portugal, Qatar, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden and United Kingdom of Great Britain and Northern Ireland.

[32] Austria, Belgium, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

[33] Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

[34] Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

[35] Andorra, Angola, Ecuador, Mexico, Portugal and Serbia.

or Degrading Treatment or Punishment. Slovakia also proposed establishing a mechanism to monitor the implementation of such a protocol.

38. Canada suggested that States might be more willing to support non-binding international standards than to support a binding instrument. Slovakia proposed the adoption of a resolution by the General Assembly if consensus could not be reached on the elaboration of a binding instrument. The United Kingdom also stressed the importance of remaining flexible with regard to the nature of such an instrument, at least until the potential scope and content of any standards became clearer. Brazil considered that the negotiation of an international legally binding instrument in that area was premature, given that it might result in the erection of unnecessary barriers to trade in products that had a legitimate purpose and use. It considered that the major challenge would be to define the scope of common international standards and that such standards should be reflected in trade guidelines or recommendations that would take into account relevant national and international human rights commitments already in place.

# V. Conclusions and recommendations

39. **The prohibition of torture is a peremptory norm of international law under all circumstances. International, regional and domestic courts have recognized the prohibition of cruel, inhuman or degrading treatment or punishment as customary international law. Much has been achieved in the fight against torture and other cruel, inhuman or degrading treatment or punishment, yet more action is needed to eradicate them fully. All measures taken towards eradicating torture and other cruel, inhuman or degrading treatment or punishment constitute an advance in the protection of human rights.**

40. **The information received from Member States revealed an uneven situation at both the regional and the national levels regarding the regulation of the import, export and transfer of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. The establishment of common international standards could ensure more effective regulation in this area. In that regard, relevant regional and national regulations may serve as a reference for consideration by Member States.**

41. **A majority of Member States that provided input expressed support for the establishment of common international standards. In their inputs, Member States outlined legal, practical and other considerations for the possible scope of a range of options to establish common international standards for the import, export and transfer of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.**

42. **With regard to possible categories of goods to be regulated under common international standards, several Member States proposed that goods that have no practical use other than for the purpose of capital punishment, torture or other forms of ill-treatment be separated from goods that could be used for such purposes as well as other purposes.**

43. **A majority of Member States that provided input suggested that an exhaustive list of goods should be adopted in order to ensure consistency in the application of common international standards. Some States considered that such a list might nevertheless need to be updated regularly. The options they provided and the types of goods to be covered by common international standards should be examined in the light of existing international agreements**

**in order to avoid the creation of unnecessary barriers to trade in goods that are used for legitimate purposes.**

44. **The majority of Member States that provided input highlighted the need for the prohibition of trade in goods that have no practical use other than for the purpose of capital punishment, torture or other forms of ill-treatment. Similarly, the majority of Member States that provided input indicated the need for control with regard to goods that could be used for such purposes.**

45. **The majority of Member States that provided input considered that import, export and transfer and related activities, such as brokering services, technical assistance, training in the use of regulated goods, promotion at trade fairs or exhibitions, and advertising, should be included in the scope of common international standards. Member States also proposed that consideration be given to other activities that facilitate the availability of and enable the trade in goods used for capital punishment, torture or other forms of ill-treatment, namely, the transit, manufacturing, production, sale and purchase of goods in relevant categories.**

46. **Consideration should be given to the views of all Member States concerning the need to establish a mechanism and criteria for risk assessment of trade in goods that could be used for capital punishment, torture or other forms of ill-treatment. Member States that provided input noted the importance of export authorization requirements and end-use verification as appropriate mechanisms for inclusion in the scope of common international standards. They also underscored the importance of considering the risk of diversion. Further deliberations on the matter should be guided by the existing international and regional treaties, agreements and regulations on dual-use goods.**

47. **The Guiding Principles on Business and Human Rights should be used as a basis for further discussions on common international standards in this area. In line with the Guiding Principles, companies involved in trading goods that could be used for capital punishment, torture or other forms of ill-treatment should carry out human rights due diligence.**

48. **Most States that provided input were in favour of a legally binding instrument. Some specifically referred to a convention or a further optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, with some expressing a preference for a global instrument and others expressing a preference for a regional instrument. Other States that provided input were in favour of a non-binding instrument or non-binding international standards and called for flexibility until the scope of the standards was further defined.**

49. **The inputs received from Member States and the suggestions made with regard to the feasibility and possible scope of a range of options to establish common international standards for the import, export and transfer of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment provide a basis for further deliberations by the group of governmental experts to be established under paragraph 2 of General Assembly resolution 73/304. Member States are encouraged to provide appropriate support to the group of governmental experts.**

50. **Taking into account all the inputs received for the present report, it is important to broaden engagement with the process of considering the establishment of common international standards and further consult Member States across all regions and other stakeholders to shape a wider consensus as the process moves forward.**