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人权委员会

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公民权利和政治权利，包括以下问题：酷刑和拘留

酷刑问题特别报告员范博芬根据人权委员会第 2002/38 号  
决议提出的关于专门用来施以酷刑或其他残忍、不人道  
或有辱人格的待遇的器具的交易和生产情况、  
其产地、目的地及种类的研究报告

## 内容提要

特别报告员兹按照第 2002/38 号决议第 13 段，提出关于专门用来施以酷刑或其他残忍、不人道或有辱人格的待遇的器具的交易和生产情况、其产地、目的地及种类的初步研究报告，以便找到禁止此类交易和生产的最佳办法，制止此类器具的扩散。

首先请委员会注意特别报告员提交的前几次报告中提到此种器具之处。正当使用某些类型的此类器具，特别是某些戒具(如手铐)和动能和化学装置，在一些适当的情况下得到认可。特别报告员注意到，这种器具往往可能是取代其他安全装置的非致命性另类手段。不过，据称这种器具也遭到滥用或被故意用来施以酷刑和其他形式的虐待。不过，其他类型的器具本来就残忍、不人道或有辱人格，使用这种器具必将违反禁止酷刑和其他形式的虐待的规定。

特别报告员不打算拟订用途本来就残忍、不人道或有辱人格的所有器具和器械的清单，因为这需要更加深入的研究。不过，他对某些器具的使用表示关切，因为据称其医疗影响、包括心理影响尚未为人所知。由于没有对短期和长期影响作过彻底、独立和公正的医疗测试，这在评价某一具体装置是否本来就残忍、不人道或有辱人格时造成了实际问题。

国际人权法至今主要涉及可以使用这类器具的情况这一问题。已经拟订关于执法器具和戒具的分类、使用和监测的详细指导原则。这些指导原则有一项共同的规定是，只有在绝对必要的情况下才能使用武力，而且所用的武力应与为达到正当目标所需的武力成比例(比例原则)。

关于专门用来施以酷刑和其他形式虐待的器具的交易问题，据报告，这是一项全球性的贸易，涉及全世界各区域的国家。据称有关所涉公司的现有资料并不完全，也不代表这种器具的真正生产和交易规模，因为很少有政府提供这方面的数据。尤其必须指出，许多国家并不要求对这种产品的出口、转运或经纪有许可证。

特别报告员在本报告中赞赏地注意到，在国家和区域各级采取了一些行动，以防止专门用于施以酷刑或其他残忍、不人道或有辱人格的待遇的器具的交易和生产。特别报告员希望各国政府和其他有关方面提供更多的关于这种行动的资料，

以求今后确立一套最佳做法。具体而言，特别报告员谨强调，必须建立监测机制来管制国家和国际交易和生产条例的遵守情况。

最后，特别报告员提醒《禁止酷刑和其他残忍、不人道或有辱人格待遇或处罚公约》缔约国注意《公约》第 2 条，其中规定，“每一缔约国应采取有效的立法、行政、司法或其他措施，防止在其管辖的任何领土内出现酷刑的行为。”他认为，颁布法律和其他措施来制止专门用于施以酷刑或其他残忍、不人道或有辱人格待遇的器具的生产和交易是防止酷刑行为这一总的义务的一部分。

特别报告员完全相信，必须不断开展这项研究，并希望人权委员会继续请他不断审议这一问题。他鼓励尚未就此问题提出资料的各国政府和非政府来源提出这类资料，以便他开展深入研究，就如何禁止此类器具的交易和生产、制止其扩散作出具体建议。

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一、理事会关于某些可被用于死刑、酷刑和其他残忍、不人道或有 辱人格的待遇或处罚的器具和产品的贸易的条例草案.....	15
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## 导 言

1. 人权委员会第 2001/62 号决议第 9 段请特别报告员“研究[专门用来施以酷刑或其他残忍、不人道或有辱人格的待遇的器具的]交易和生产情况，包括此类器具的产地、目的地及种类等，以期找到禁止此种交易和生产的最佳办法，制止此类器具的扩散，并就此向委员会提交报告”。为此，2001 年 8 月 7 日，秘书处向各国常驻联合国日内瓦办事处代表团、各国际组织和各有关政府间和非政府组织发出一份普通照会。前任特别报告员奈杰尔·罗德利爵士在提交人权委员会后一届会议的报告中指出，鉴于收到的评论意见数目有限，“其继任者需要获得更多的资料，才能有效开展此项研究工作”(E/CN.4/2002/76, 第 4 段)。

2. 人权委员会第 2002/38 号决议第 13 段再次请特别报告员“继续研究，尽快完成此项研究”，并吁请各国和各非政府组织提供特别报告员所要求的资料。新任命的特别报告员范博芬在他提交委员会的第一次报告中“充分意识到要求他进行的研究的重要性”(E/CN.4/2002/137, 第 18 段)，表示希望得到更多资料，使他开展这项研究，向人权委员会提出报告。为此，2002 年 6 月 3 日，秘书处发出了第二份普通照会。

3. 在编写本报告之时，特别报告员收到以下各国政府提出的资料和意见：阿根廷、巴林、白俄罗斯、哥伦比亚、古巴、德国、科威特、黎巴嫩、毛里求斯、西班牙、瑞士、多哥、突尼斯和乌兹别克斯坦，并收到以下非政府组织提出的资料和意见：大赦国际、奥米茄基金会和国际警察协会。2002 年 10 月 25 日至 26 日，特别报告员还参加了大赦国际国际秘书处在伦敦举行的关于安全器具和防止酷刑问题的国际专家会议。

4. 特别报告员兹根据上述决议提交关于专门用来施以酷刑和其他形式虐待的器具的交易和生产问题的初步研究报告。

### 一、特别报告员以前审查过的关于此类器具的资料

5. 特别报告员谨提请人权委员会注意以前提交的报告中提到此类器具之处。尤其值得注意的是，第一任酷刑问题特别报告员彼得·科艾曼斯在他 1986 年向人

权委员会提交的第一次报告中指出，有一些国家生产和出口专门用来施以酷刑的器械(见 E/CN.4/1986/15, 第 120 至 121 段)。

6. 多年来，曾提请各国政府注意过有关使用被认为是专门用来施以酷刑和其他形式虐待的安全和其他器具和器械来施以酷刑和其他形式虐待的资料，并特别提到了一些低技术的机械戒具，如镣铐、铁链、脚镣和指铐；制约椅、铐板和其他装置，如“地牢”(据称受害者的手腕和脚被交叉的钢链捆住，既不能走路也不能坐下)；电击武器，如电棍、眩晕枪、眩晕盾、泰瑟枪和动能装置；以及催泪弹和辣椒气等化学控制物质。上面提到的国际专家会议提请特别报告员注意，不断有新的器具和技术在开发出来，在开展这项研究时应特别注意考虑到这种新的发展。

7. 正当使用某种这类器具，特别是一些戒具(如手铐)和动能和化学装置，在适当情况下是可以的。特别报告员指出，它们往往可能是代替其他安全装置的非致命性另类办法。不过，据称它们也有被滥用，有时候是因为缺乏适当的训练，有时候是被故意用来施以酷刑和其他形式的虐待。而其他类型的器具本来就残忍、不人道或有辱人格，使用这种器具必然会违反禁止酷刑和其他形式的虐待的规定。

8. 例如，关于眩晕装置，特别报告员注意到，他的前任认为，“收到的资料说，眩晕装置传导电击，使囚犯失去抵抗的能力，据报道，这可致人剧痛，造成重伤，在有些情况下甚至会致死。……据报道，打开眩晕带开关时，可通过血管和神经在 8 秒钟内向左肾传导 5 万伏的电击，造成剧痛，立即不能动作，还可能造成大小便失禁。……特别报告员对作为用于侮辱和降低人格的装置的这种眩晕带的性质感到严重关注”(E/CN.4/1998/38, 第 201 段)。<sup>1</sup>“使用电击装置和制约椅作为约束方法……可能违反《公约》第 16 条的规定”。<sup>2</sup>

9. 同样，关于铁棍脚镣(即用一根铁棍锁住囚犯脚踝四周的铁圈，使囚犯的双脚永远保持铁棍的距离)问题，特别报告员谨提请人权委员会注意巴基斯坦信德省高等法院作出的一项具有里程碑性质的裁决，其中法院称，“在严密看守/与世隔绝的牢房中给犯人加带铁棍脚镣的方式带有羞辱性质并且违反人的尊严”。<sup>3</sup>为此，高等法院认为，关于铁棍脚镣的规定违反《宪法》对人的尊重不容侵犯的保障。因此，该法院看来是认识到这些戒具所固有的非人道和有辱人格的性质。后

来，巴基斯坦政府通知特别报告员，已决定在巴基斯坦全国禁止使用铁棍脚镣，只有对高度警戒囚犯除外，而且只有在完全遵守巴基斯坦最高法院临时命令的情况下才能使用(见 E/CN.4/2001/66，第 834 段)。

10. 据报告，纳米比亚最高法院对给囚犯带脚镣的做法得出了同样的结论。有人替他们提出申请，理由是给他们带脚镣是不人道和有辱人格的待遇，违反民权法典。1999 年，最高法院做出裁决，认为这种做法不符合《宪法》。<sup>4</sup> 其中一些囚犯带脚链等待审判长达 4 个月之久，特别报告员等将此事提请纳米比亚政府注意(见 E/CN.4/1999/61，第 527 段)。

11. 特别报告员的各次报告内还有其他许多例子。不过，他并不想拟出一份本来就残忍、不人道或有辱人格的所有器具和器械清单，因为这需要作更加深入的研究。不过，特别报告员谨对某种器具的使用表示关切，因为据称其确切医疗影响、包括心理影响尚未为人所知。由于没有对短期和长期影响作过彻底、独立和公正的医疗测试，这在评价某一具体装置性质是否本来就残忍、不人道或有辱人格时造成了实际问题。

12. 例如，催泪弹/刺激剂和辣椒气武器等化学剂能提供有效的控制而不对生命造成危险，从而对宣传为代替致命武力的“人道替代办法”。然而，根据已收到的资料，尚未对其对目标对象的潜在作用做足够的研究。特别报告员特别注意到，为“控制人群”目的而用的化学剂如不分青红皂白地对示威者使用，便容易造成滥用。据称，往往缺乏有关可以使用这种化学剂的情况的确切实际指导方针，也缺乏有关其对儿童、孕妇和有呼吸道问题的人等具体人权的作用的资料。同样，关于电击装置，南非调查造成 1996 年 7 月 31 日滕比萨铁路乘客伤亡事件的背景，情况可行动问题联合委员会建议，“在南非禁止使用电棒，在建立制造、出售和使用电棒的规范框架、有可靠和独立的医疗和法律研究证明使用电棒不会使任何人遭到残忍、不人道和有辱人格的待遇或惩罚之前，维持这项禁止。”此外，据认为，有权使用这种装置的执法人员往往没有接受培训如何向可能的受害者提供适当的医疗照顾。

13. 同样，许多这类装置，特别是电击武器，容易遭到滥用，因为他们可以对用来造成剧痛而不留下任何可见的伤痕。据说，利用高电压电击技术的装置范围在整个 1990 年代都有扩大，继电棍和眩晕枪之后，又生产了眩晕盾、发射标枪

的眩晕枪、眩晕带和催泪眩晕武器等。据收到的资料，电击装置据称已在世界每个区域至少 76 个国家的监狱、拘留中心和派出所被用来施以酷刑或虐待。<sup>5</sup>

## 二、关于使用这类器具的现有的法律框架

14. 国际人权法至今主要涉及在何种情况下可以使用这类器具的问题。具体而言，《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》第 11 条规定，“每个缔约国应经常有系统地审查对在其管辖的领土内遭到任何形式的逮捕、扣押或监禁的人进行审讯的规则、指示、方法和惯例以及对他们的拘留和待遇的安排，以避免发生任何酷刑事件”（着重号后加）。

15. 后又拟定了有关执法器具和戒具的分类、使用和监测的更详细的指导原则。他们都有一项共同的规定，即只有在绝对必要时才能使用武力，而且所用武力应与为达到正当目的所必需的武力成比例（比例原则）。

16. 《执法人员使用武力和火器的基本原则》第 2 段规定，“各国政府和执法机关应尽可能广泛地发展一系列手段并用各类武器弹药装备执法人员，以便可以在不同情况下有区别地使用武力和火器。这应包括发展供适当情况下使用的非致命但可使抵抗能力丧失的武器，以期不断扩大对使用可引起死亡或伤害人身的手段限制。为了相同目的，执法人员还应可以配备自卫设备，例如盾牌、钢盔、防弹服和防弹运输工具，以便减少使用任何种类的武器的必要性。”

17. 其中一些原则涉及具体器具。例如，关于戒具问题，《囚犯待遇最低限度标准规则》规定，“戒具如手镣、铁链、脚铐、拘束衣等，永远不得作为惩罚用具。此外，铁链或脚铐亦不得用作戒具。除非在下列情况下，不得使用其他戒具：(a) 移送囚犯时防其逃亡，但囚犯在司法或行政当局出庭时，应予除去；(b) 根据医官指示有医药上理由；(c) 如果其他管制办法无效、经主任下达命令，以避免囚犯伤害自己、伤及他人或损坏财产；遇此情况，主任应立即咨询医官并报告上级行政官员”（第 33 条）。第 34 条除其他外规定，“戒具非绝对必要时不得使用”。

18. 而且，这些不同的原则表明，在这种器具的发展和部署过程中需要有评价、控制和监测机制。具体而言，《执法人员使用武力和火器的基本原则》第 3 条规定，应认真评价非致命但可使抵抗能力丧失的武器的发展和部署，以尽量减



少危及与事无关的人的危险，并应认真控制这类武器的使用。”往往缺乏有关可以使用这种安全或控制器具的情况的确切准则，执法人员也缺乏适当的培训。

19. 在这方面，西班牙政府 2002 年 8 月 8 日的来信指出，“……安全部队为履行公共安全方面的任务所使用的一切警察和安全器材对人的作用都经过认真研究，并需经这方面的主管部门核可。同样，必须指出，在培训这种安全部队成员方面，西班牙当局一直强调，他们必须增进尊重人权和效力于消除酷刑，以防止传授可能与近似酷刑的办法有关的技巧或程序。”

### 三、所收到的关于这类器具的生产和交易的资料

20. 特别报告员收到的一些资料表明，专门用于施以酷刑和其他形式的虐待的器械交易是一项全球性交易，涉及全世界每个区域的国家。<sup>6</sup> 关于所涉公司的现有资料据报并不完全，而且也不代表这类器具的生产和交易的真正规模，因为很少有政府提供这方面的数据。具体而言，必须指出，许多国家并不要求对这种产品的出口、转运和经纪有许可证。例如，手镣、脚铐、镣铐、铁链和指铐等机械戒具(所谓的“低技术器具”)，据报在国与国之间转让，其交易和使用很少受政府控制。<sup>7</sup>

21. 在这方面，特别报告员谨提到外交和联邦事务部(大不列颠及北爱尔兰联合王国)代表在国际专家讨论会上交给他的一份文件，文件的题目是：“为禁止出口电击武器而在采取的行动”；文件转载了外交和联邦事务大臣 1997 年 7 月 28 日发表的一份声明。这项声明肯定，英国政府致力于“防止英国公司制造、出售或获取主要用于酷刑的器具，并要求实行全面禁止”，并致力于采取必要措施防止从联合王国出口或转运以下器具：“用于或改用于防暴或自卫以造成电休克的便携式装置，包括电棍、电盾、眩晕枪和泰瑟枪以及这种装置的特制部件、脚铐、排链、镣铐(不包括普通手镣)和用于制约人的电击带。”特别报告员还注意到，呼吁欧盟其他成员为“防止可能的施加酷刑者在别处购取此类设备”，实行类似的限制，“作为全面禁止的第一步。”

22. 2002 年 8 月 22 日，阿根廷政府来信通知特别报告员，阿根廷国会正在审议一项非常详细的决议草案，“以否定和谴责酷刑器具的生产和出口，并要求行政部门禁止用途本来就残忍、不人道和有辱人格的警察和安全器具的生产、进

出口和销售”。决议草案还“促请其他国家采取有效控制措施，确保不再出口此类器具。”据报告，阿根廷国会各委员会，如刑事立法委员会、人权和保障委员会、工业委员会和贸易委员会等已对该信所附草案进行审查。

23. 2002 年 6 月 28 日，黎巴嫩政府来信通知特别报告员，“没有任何残忍和非人道或有辱人格待遇的器具的交易或其他做法。有关部门正在采取一切措施禁止在黎巴嫩境内进行这种交易或进口这种器具。安全机关在法官的监督下进行一切有关调查，以防止任何人企图从事这类器具的交易。在黎巴嫩，没有禁止生产此类器具的立法。不过，政府当局可以根据法规颁布一项这方面的法律。”

24. 同样，2001 年 11 月 20 日，突尼斯政府来信表示，“……突尼斯现行立法禁止这类活动[生产、交易、出口和利用特别用于施以酷刑行为的器具]，并认为这种活动为非法活动。在这方面，涉及合同义务问题的《债务和合同法典》第 67 条及随后各条规定，“没有理由或基于非法理由的债务等于无效。”而且，“理由非法即指违反道德、公共秩序或法律。”

25. 特别报告员欢迎在国家一级的这种行动。不过，如上所述，只有全面禁止才能有效防止这类器具的交易。

26. 在这方面，特别报告员满意地注意到欧洲议会在区域一级采取的行动——它于 2000 年通过一项决议，<sup>8</sup> 欢迎理事会内就非军用安全和警察器具共同清单达成协议，促请欧洲联盟委员会确保对这类器具的控制机制包括禁止用途本来就残忍、非人道或有辱人格的警察的安全器具的促销、交易和出口，其中包括脚镣、电击眩晕带和刻齿指铐等致痛装置。欧洲议会还要求停止“转让医疗作用尚未完全为人所知的器具，如高电压电击武器，以待对其作用进行严格的独立调查得出结果”；并停止转让“在实际使用时发现很有可能被滥用或造成不应有的伤害的器具，如脚镣、铐板——制约椅和辣椒气武器”。欧洲议会要求欧洲联盟委员会“致力于在欧洲联盟委员会范围内禁止制造、使用或在可行时取缔这种器具”。欧洲议会感到失望的是，“在控制军火经纪方面似乎进展甚微”，要求各成员国加强努力控制军火经纪，并争取拟定一项有国际法律约束力的军火经纪协议。欧洲议会还谈到，需要一项监测最终用途的共同制度，并需要对欧洲联盟公司在国外进行军事器具特许生产进行控制。欧洲议会还强调，必须有透明度，形式包括统一各国载有透明详细资料的年度报告(包括关于许可证政策、政策发展、条约承

诺、国际义务(如禁运)、立法变动等的资料，并且对每一份批准或不批准的许可证，都需作出器具说明，提供关于数量、目的地、最终用户和价值的详细资料以及不批准许可证的理由)，并需要议会对各成员国的军火出口管制政策和出口许可证颁发决定进行审查。

27. 特别报告员谨提请人权委员会注意欧洲联盟委员会 2002 年 12 月 30 日通过的“理事会关于某些可被用于死刑、酷刑和其他残忍、不人道或有辱人格的待遇或处罚的器具的产品的贸易的条例草案”(COM(2002)770)(附件一)。这份草案是欧洲联盟理事会内进行讨论的基础。按照《建立欧洲共同体条约》第 205 条第 2 款的规定，如果特定多数的成员国赞成，理事会便可以通过这项条例。必须指出，理事会的条例在欧洲联盟所有成员国是直接可以适用的法律，并且较成员国与它有冲突的法律优先适用。草案的目的是建立一套具体的贸易制度，范围涵盖某些可以用于酷刑和其他残忍、不人道或有辱人格的待遇或处罚的器具和产品。如上所述，这类制度的目的是促进防止侵犯基本人权的情况，防止酷刑和其他残忍、非人道或有辱人格的待遇或惩罚。

28. 据报告，一些出口保安器具和其他控制犯罪物品的国家已颁布立法，规定在颁布许可决定时应考虑到人权记录。具体而言，特别报告员在国际专家讨论会上收到资料，据称美利坚合众国要求有这种许可证才能出口大多数控制犯罪物品。<sup>9</sup> 总的来说，对于任何政府一贯从事侵犯人权行为或存在内乱的国家，便不发给这类物品的出口许可证。所提到的一个例子是，《出口管理法 Lantos-Hyde 修正案》第 311 条 H.R.2581 定，如果外国政府一再从事酷刑行为，则禁止向其出口控制犯罪器具。这项修正案还禁止出口酷刑器具，包括大头棒、指铐和电击眩晕带。必须指出，据说国务院每年的各国人权情况报告内所汇编的情况是作出是否发给许可证的建议时考虑的一个重要因素。

29. 同样，瑞士政府于 2002 年 10 月 23 日来信通知特别报告员说，“关于武器的联邦法律将普通警棍和弹簧警棍以及电击器械定为可以用于酷刑目的的武器。关于武器的这项法律规定，向国外的收货人出口和转运武器以及从事武器经纪和交易属于关于战争物资的联邦法的范畴，因此所涉武器也属于这一范畴。在这种情况下，需要有许可证才能进行，而发放许可证需满足《战争物资法》内所规定的一些条件，其中包括(a) 维持和平、国际安全和区域稳定；(b) 目的地国内

的一般情况，特别是尊重人权和放弃使用儿童兵的情况；……(d) 目的地国对国际社会的态度，特别是尊重国际公法的情况；(e) 像瑞士一样属于国际出口管制制度的国家所采取的行为。”<sup>10</sup>

30. 2002 年 1 月 3 日，德国政府表示，“德国出口管制法所要求的许可既适当考虑到实行有效管制的需要，也适当考虑到出口有关货物用于国外安全的最终用途的可能性……只有最终用途预计是安全的，即看来可以排除侵犯人权的滥用行为，才能授予许可证。为此，申请必须附有文件说明货物的最终目的地和最终用途以及所用目的。联邦经济和出口管制处在进行审查时还可以查阅手头的一切资料，包括联邦情报处之类的德国机关和国际组织和人权组织的调查结果。德国政府还说，“……侵犯人权的国家主要使用一般用于正当目的的装置施以酷刑。滥用的危险源自于使用这种装置的方式。德国政府认为，有效控制滥用危险的最佳方式是根据上述出口管制法采取措施。”

31. 尽管在国家一级采取了一些积极行动(上面已经举出一些例子)，但据报告，由于缺乏对军事、安全和警察器具的议会管制机制，缺乏透明度，禁止此类器具交易的规定往往得不到有效执行。在一些国家，据说各公司逃避贸易管制或利用法律漏洞，通过经纪人出售这种物品，即由在这种出口不受规范或禁止的第三国的代理商出售这种物品，从而规避禁令。

32. 关于上述安全器具，其制造商据说因政府保密和缺乏责任制而得益非浅。据报大多数国家的政府不提供有关生产活动、国际转让或销售情况的详细资料，据称它们也不要求这种器具的经纪人或经销商在政府正式注册或申请许可证批准出口这种武器。据说，低技术戒具和非致命性电击和化学武器的情况尤其如此。如古巴政府在 2002 年 9 月 2 日的信中所述，“只禁止整个过程的一个阶段便为使用这类手段开了方便之门，而且会形成一个非法市场，以继续生产这类器具。”

33. 关于如在适当情况下正确使用能保障身心完整的权利的器具，据说常常在接收国执法机关没有受到关于如何使用的培训、而且没有关于如何使用的明确准则和国家管制机制的情况下批准出口此类器具。例如，越来越多的动能冲击装置正在研制之中。经培训后在一个追究责任的制度下正确使用普通警棍可能符合国际义务，但专门用来造成剧痛的其他装置和警棍(如“控制棍”、手柄在侧面或

有多个手柄的警棍、顶端有金属球的警棍、加重的警棍、手套或棍棒和可伸缩的警棍、带刺的警棍、飞片、铁皮竹棍、皮鞭等)据报也在交易，并用于使用过度武力。据说，这种装置也被用于已处于拘束状态的人，据称没有其他目的，只是为了施加疼痛。

#### 四、初步结论

34. 特别报告员赞赏地注意到在国家一级为防止特别用于施以酷刑或其他残忍、不人道或有辱人格的待遇的器具的贸易和生产采取了一些行动。特别报告员希望各国政府和其他有关方面就这种行动提供更多的资料，以在今后某个阶段确立一套最佳办法。具体而言，特别报告员谨强调，必须建立监测机制来监督对不论是国家还是国际贸易和生产条例的遵守情况。特别报告员还谨提请人权委员会注意大赦国际于 2001 年向各国政府和各公司提出的建议(附件二)。

35. 特别报告员谨提醒《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》缔约国，该公约第 2 条规定，“每一缔约国应采取有效的立法、行政、司法或其他措施，防止在其管辖的任何领土内出现酷刑的行为。”他认为，颁布法律和其他措施制止专门用以施以酷刑或其他残忍、不人道或有辱人格的待遇的器具的生产和交易是防止酷刑行为这一一般性义务的一部分。

36. 特别报告员完全相信，必须不断开展本项研究，并希望人权委员会继续请他不断审议这一问题。他鼓励尚未就此问题提出资料的各国政府和非政府来源提出资料，以便他开展深入研究，就如何禁止这类器具的交易和生产、制止其扩散作出具体建议。

#### 注

<sup>1</sup> 此外，报告还称，“据称，眩晕带已经被作为制约工具在司法听审中使用，这违反禁止在司法机构出庭时对囚犯使用约束物的《囚犯待遇最低限度标准》”。

<sup>2</sup> 禁止酷刑委员会第二十八届会议的报告，《大会正式记录，第五十五届会议，补编第 44 号》(A/55/44)，关于美利坚合众国的初次报告的结论和建议，第 179(e)段。为此，委员会建议缔约国“取缔电击制服皮带和制约椅作为约束被羁押者的方法；这种戒具的使用必然导致违反《公约》第 16 条”。同上，第 180(c) 段。



<sup>3</sup> 信德省高等法院 1993 年 12 月 30 日的裁决, 第 3 页, 引于 E/CN.4/1997/7/Add.2, 第 59 段和注 1。在该报告所述的具体案件中, 长时间使用铁棍脚镣的目的(为移送囚犯或作为惩罚手段)据说也违反《囚犯待遇最低限度标准规则》(第 33 和 34 条), 可被认为是一种不人道和有辱人格的待遇(同上, 第 57 段)。

<sup>4</sup> 见纳米比亚最高法院《T.Namunjepo 诉温得和克监狱长案》, 1999 年。

<sup>5</sup> 大赦国际, 《制止酷刑交易》, 大赦国际编号: ACT/40/002/2001, 2001 年 2 月 26 日。

<sup>6</sup> 资料根据的是由奥米茄基金会开展的研究, 特别报告员在安全器具和预防酷刑问题国际专家会议上获得此份资料。

<sup>7</sup> 大赦国际, 前引书。

<sup>8</sup> 欧洲议会按照《欧洲联盟军火出口行为守则》(13177/1/2000-C5-0111/2001-2001/2050(SOS))执行部分第 8 条通过的关于理事会第二次年度报告的决议。

<sup>9</sup> 美利坚合众国工业和安全局(美国商务部), 外国警察报告, 第二章, “犯罪控制/人权”。见 <http://www.bxa.doc.gov/PRESS/2001/ForeignPolicyReport/Chapter2.html>(2002 年 10 月 10 日)。

<sup>10</sup> 本摘录所述各项法律可在以下网站查阅: <http://www.admin.ch/ch/f/rs/rs.html> (2002 年 10 月 23 日)。

**Annex I<sup>\*</sup>**



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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\* The text of annex I is reproduced as it appeared on the web site of the European Union (<http://europa.eu.int/eur-lex/en/oj/index.html>) on 30 December 2001.

### **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 against escape during a transfer, on medical grounds as directed by a medical officer, or,

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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.

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</i> 4421 90 98	Gallows and guillotines
<i>ex</i> 8208 90 00	
<i>ex</i> 8543 89 95	Electric chairs designed or modified for the purpose of execution of human beings (output at least 1 000 V)
<i>ex</i> 9401 79 00	
<i>ex</i> 9401 80 00	
<i>ex</i> 9402 10 00	
<i>ex</i> 9402 90 00	
<i>ex</i> 9406 00 39	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</i> 9406 00 90	
<i>ex</i> 8413 81 90	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</i> 9018 90 50	
<i>ex</i> 9018 90 60	
<i>ex</i> 9018 90 85	
<i>ex</i> 8543 89 95	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</i> 7326 90 97	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</i> 8301 50 00	
<i>ex</i> 3926 90 99	
<i>ex</i> 7326 90 97	Individual cuffs or shackle bracelets, designed for restraining human beings, having a minimum internal perimeter exceeding 190 mm when fully locked
<i>ex</i> 8301 50 00	
<i>ex</i> 3926 90 99	
<i>ex</i> 7326 90 97	Thumb-cuffs and thumb-screws, including serrated thumb-cuffs
<i>ex</i> 8301 50 00	
<i>ex</i> 3926 90 99	
	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>
ex 9401 61 00	Restraint chairs and shackle boards
ex 9401 69 00	
ex 9401 71 00	
ex 9401 79 00	
ex 9402 90 00	
ex 9403 20 91	
ex 9403 20 99	
ex 9403 50 00	
ex 9403 70 90	
ex 9403 80 00	
ex 8543 89 95	
ex 9304 00 00	
	Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (high frequency pulses equal to or exceeding 50 000 V), including but not limited to electric-shock batons, electric shock shields, stun guns and electric shock dart guns (tasers)
ex 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)
ex 9304 00 00	
	Components specially designed or modified for any of the above
ex 2926 90 95	$\alpha$ -Bromophenylacetonitrile ( $\alpha$ -bromobenzyl cyanide) (CA) (CAS 5798-79-8)
ex 2926 90 95	(2-chlorobenzylidene)malononitrile (o-chlorobenzal malononitrile) (CS) (CAS 2698-41-1)
ex 2914 70 90	2-chloroacetophenone (Phenylacetyl chloride) (CN) (CAS 532-27-4)
ex 2934 99 90	Dibenz-[b,f]-[1,4]oxazepine (CR) (CAS 257-07-8)
ex 2924 29 95	Pelargonic acid vanillylamide (PAVA) or synthetic pepper spray (CAS 2444-46-4)
ex 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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