



CDDH(2019)R92Addendum3
16/12/2019

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

**CDDH Feasibility study of a legal instrument concerning the trade
in goods used for torture and other cruel, inhuman
or degrading treatment or punishment and the death penalty**

adopted by the CDDH
at its 92nd meeting (26–29 November 2019)

Preliminary remarks

1. In its answer of 12 September 2018¹ to Recommendation 2123 (2018) of the Parliamentary Assembly “Strengthening international regulations against trade in goods used for torture and the death penalty”, the Committee of Ministers:

“[A]gree[d] with the Assembly that strengthening international regulations against trade in goods used for torture and the death penalty would be a useful addition to efforts at European and global levels to prohibit torture and inhuman or degrading treatment or punishment and abolish the death penalty. It is convinced that, in view of its pioneering role in these areas, the Council of Europe should contribute, for example by providing member States with a general framework and guidance for measures to take, with a view to establishing and implementing an effective regulatory system.”

2. It indicated in particular that:

“it would be expedient to have a study carried out by the Steering Committee for Human Rights enabling it to gauge the feasibility of a legal instrument in this sphere, taking account of the existing work within the framework of the Council of Europe and other international arenas, as well as examples of good practices to be gathered via the new digital platform on human rights and business”.

3. Based on the approved scheme by the Bureau and of the information provided by member States², a consultant expert, Dr Michael CROWLEY³, together with the Secretariat, prepared the present draft. It was discussed by the CDDH at its 91st meeting (18-21 June 2019) and adopted at its 92nd meeting (26-29 November 2019) for transmission to the Committee of Ministers before the end of 2019.

Introduction

4. The purpose of this study is to provide information to the Committee of Ministers on:
 - (i) the current situation concerning trade in the Council of Europe region of goods used for torture or other cruel, inhuman or degrading treatment or punishment and the death penalty;
 - (ii) the current legal responses within the framework of the Council of Europe and other international arenas, as well as at national level via a number of examples of good practice; and
 - (iii) the possibility to strengthen international regulations by a specific contribution of the Council of Europe.
5. The study could thus form a basis for further discussions within the Committee of Ministers on the feasibility of a further Council of Europe work in this area.

¹ 1323rd meeting of the Ministers’ Deputies, document CM/AS(2018)Rec2123-final.

² The information request sent to the CDDH for this purpose appears in [Appendix IV](#) hereafter.

³ Research Associate, University of Bradford (United Kingdom), Omega Research Foundation.,

I - THE CURRENT SITUATION

6. Almost any device or weapon can be used to inflict torture and other cruel, inhuman and degrading treatment or punishment (ill-treatment). Nonetheless, reports over many years from the United Nations (hereafter UN), regional and national monitoring bodies⁴, as well as non-governmental human rights organisations⁵, have repeatedly highlighted the (mis)use of specialist (often mass-produced) law enforcement equipment in such practices ('tools of torture') throughout the world.
7. "Tools of torture" can be divided into two distinct categories:
 - (a) Inherently cruel, inhuman or degrading (abusive) law enforcement equipment and weapons. This encompasses a relatively narrow range of goods currently manufactured and/or promoted by a limited number of companies, albeit in all regions of the world;
 - (b) Law enforcement equipment and weapons that can have a legitimate function, when used in strict accordance with international and regional human rights and use of force standards⁶, but which can and are readily misused by correctional and law enforcement officials to torture and ill-treat people. This encompasses a broader range of goods, produced and traded on a significant scale by a large number of companies throughout the world.
8. In his 2004 Report on the question of torture to the UN Human Rights Commission, the then UN Special Rapporteur on Torture, Prof. Theo Van Boven, compared the relative frequency of use of both categories of equipment and weapons in torture:

⁴ See in particular reports of the UN Subcommittee for the Prevention of Torture, UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Committee Against Torture, Council of Europe's Committee for the Prevention of Torture, and the Inter-American Commission on Human Rights.

⁵ See in particular:

- Amnesty International and Omega Research Foundation, China's Trade in Tools of Torture and Repression, September 2014;
- Amnesty International and Omega Research Foundation, The Human Rights Impact of Law Enforcement Equipment, April 2015;
- Amnesty International and Omega Research Foundation, Europe's Trade in Execution and Torture Technology, May 2015;
- Omega Research Foundation and Stockholm International Peace Research Institute, The Deployment of Law enforcement Equipment in Central Asia and the South Caucasus, September 2015;
- Omega Research Foundation and the Institute for Security Studies, Compliance through pain: Electric shock equipment in South African prisons, June 2016;
- Omega Research Foundation, Tools of Torture and Repression in South America: Use, manufacture and trade, July 2016;
- Omega Research Foundation, Briefing Paper: Use of Tools of Torture in OSCE participating States, 2017;
- Omega Research Foundation, Manufacture, trade and use of 'tools of torture' in the Council of Europe, January 2018 (updated June 2018).

⁶ See in particular: UN 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, Havana, Cuba, 27 August to 7 September 1990; UN, Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979.

“[T]he allegations of torture that [the Special Rapporteur] has received from all regions of the world have involved instruments such as restraints..., electro-shock weapons..., kinetic impact devices..., and chemical control substances... While some of the cases have involved the use of equipment which is inherently cruel, inhuman or degrading, and would per se breach the prohibition of torture, the vast majority have involved the misuse of those instruments, legitimate in appropriate circumstances, to inflict torture or other forms of ill-treatment”⁷ [emphasis added].

9. Evidence of the misuse of potentially legitimate law enforcement equipment and weapons amounting to torture and other ill-treatment has continued to be regularly documented by UN, regional, and national monitoring bodies inspecting prisons and other places of detention.
10. However, the misuse of such equipment is clearly not confined to custodial settings. UN, regional, and national monitors and NGOs have also reported the alleged widespread and/or systematic misuse by law enforcement officials in certain countries, of a range of crowd control equipment including tear gas, pepper spray and related delivery mechanisms, and weapon-launched kinetic impact devices, such as plastic and rubber bullets. Such allegations have included deployment against protestors, and have, in some instances, amounted to torture or ill-treatment, as highlighted by the current UN Special Rapporteur on Torture, Prof. Nils Meltzer.⁸
11. At present, only a minority of States regulate at least part of the trade in certain ‘tools of torture’ – i.e. prohibiting trade in certain inherently abusive equipment and controlling (and licensing) export of certain law enforcement equipment that could be misused.
12. An even smaller number of such States provide public information on the licensed trade of relevant controlled law enforcement equipment, and this information is often only partial and infrequent.
13. Consequently, there are no accurate or comprehensive publicly available, independently verifiable, global figures on the number of companies involved in the manufacture, promotion, and supply of such controlled goods, nor on the number of State-sanctioned transfers conducted, the volume and nature of goods transferred, nor on the nature of the recipients of such goods.
14. Certain commercial organisations have attempted to forecast market developments and give an indication of the current scale in the global trade in so-called ‘non-lethal’ weapons – a category which overlaps with and includes many of the categories of equipment of concern in this study.

For example, according to Allied Market Research, *“the non-lethal weapons market is expected to garner \$9,656 million by 2022, registering a compound growth rate of 8% during the forecast period 2016-2022”*.⁹ Owing to the nature of the industry concerned, and disparities in reporting practices, any such prediction should be treated with caution.

⁷ UN, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2005/62, 15 December 2004, paragraph 13.

⁸ UN, Report of the Special Rapporteur, Nils Meltzer, Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, A/72/178, 20 July 2017.

⁹ Allied Market Research, Non-Lethal Weapons Market- Global Opportunity Analysis And Industry Forecast, 2014 – 2022, <https://www.alliedmarketresearch.com/press-release/non-lethal-weapons-market.html>

Production, promotion and trade in the Council of Europe region

15. A study of the contemporary production, promotion, and trade in the Council of Europe region of law enforcement equipment and weapons which are designed to, or can be misused to, torture and ill-treat people was undertaken for this report, and an overview of its findings appears in Appendix I hereafter.
16. The study was based on publicly available information and will therefore certainly underestimate the true scope and scale of the activities described. It is clear that at least a small number of companies based in certain Council of Europe member States have been involved in the manufacture, promotion, or trade of inherently abusive equipment or provision of possibly abusive training to law enforcement officials. Such activities are potentially inconsistent with the prohibition against torture and other ill-treatment under Article 3 of the European Convention of Human Rights and need to be halted.
17. The promotion and trade in legitimate law enforcement equipment that could be readily misused for torture and ill-treatment is widespread in the Council of Europe region, in terms of both companies and States involved. These activities need to be controlled by *all* Council of Europe member States to ensure that such equipment, and related technical assistance and training, are not transferred to abusive end users in third countries – such actions being potentially inconsistent with Article 3 of the European Convention.
18. In addition, several Council of Europe member States regularly permit and/or facilitate arms and security equipment trade fairs and other related exhibitions, at which both companies based in the Council of Europe region, and in third countries, market their goods, and which the correctional and law enforcement communities from both Council of Europe member States and third countries attend.

During the 2014-2018 period, at least 94 arms and security equipment trade fairs and exhibitions – where companies that promote law enforcement equipment of potential concern have exhibited – were held in at least 15 member States.¹⁰

19. Although the main focus of the study was upon law enforcement equipment and weapons used in torture and other ill-treatment, a brief examination of execution technologies was also made.
 - a. During the 2014-2018 period, no evidence was found of the promotion and trade of goods specifically designed/intended for the application of the death penalty, by companies based in Council of Europe member States.
 - b. From 2011, there were reports that a number of US States had either sought or had acquired certain pharmaceutical chemicals, normally employed for legitimate medical purposes, for use in lethal injection executions, from entities outside the US, including from Europe.¹¹

¹⁰ This figure comprised 32 distinct relevant trade fairs and exhibitions which were repeatedly held (on either an annual or biennial basis) during this period.

¹¹ Reprieve, Briefing: Lethal injections drugs trade, Submission to the All Party Parliamentary Group, UK, February 2011; Amnesty International and Omega Research Foundation, No more delays, ACT 30/062/2012.

- c. Such reports led to the introduction and strengthening of trade controls by certain Council of Europe member States (notably revisions to the EU Anti-Torture Regulation) to halt further transfers intended for such end uses. In addition, manufacturers of drugs approved by the US Food and Drug Administration (FDA) and sought for use in lethal injection executions, as well as leading distributors of these drugs operating in the United States, unilaterally adopted measures to prevent such practices.
- d. During the 2014-2018 period there were no public reports of the intentional transfer by companies based in Council of Europe member States of such pharmaceutical chemicals for the purpose of lethal injection to the US or elsewhere.
- e. However, there have been reports of continuing attempts by a number of US States to acquire a growing range of pharmaceutical chemicals for lethal injection executions, including recent indications by US States that they may seek to import non-FDA approved drugs for use in such executions.¹²

II – THE CURRENT LEGAL FRAMEWORK

20. The prohibition on torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment) is absolute. The responsibility to eradicate torture and other ill-treatment applies in all circumstances and, as part of international customary law, to all States. This prohibition is incorporated into a number of international human rights instruments, including:

- the Universal Declaration of Human Rights¹³,
- the International Covenant on Civil and Political Rights¹⁴,
- and most notably, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁵

¹² <https://www.cbsnews.com/news/arizona-to-resume-executions-for-first-time-since-2014-lawsuit-announced-today-2019-07-26/>; <https://www.federalregister.gov/documents/2019/07/30/2019-16165/importer-of-controlled-substances-application-southern-ohio-correctional-facility>.

¹³ UN, Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III), 10th December 1948, Article 5.

¹⁴ UN, International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976, Article 7.

¹⁵ UN, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by General Assembly resolution 39/46 of 10 December 1984, entered into force 26 June 1987.

21. It is also enunciated in a number of regional instruments including:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁶,
- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹⁷,
- the African Charter on Human and Peoples' Rights¹⁸,
- the American Convention on Human Rights¹⁹, and
- the Charter of Fundamental Rights of the European Union.²⁰

22. Although there is no global consensus on the abolition of capital punishment, by the end of 2018, 142 countries (more than two-thirds of United Nations member States) had abolished the death penalty in law or practice,²¹ and it is now unlawful in *all* Council of Europe member States.

- Protocol No. 6 to the European Convention on Human Rights, which abolishes the death penalty in peacetime, has been ratified by all member States except the Russian Federation, whose Constitutional Court has nevertheless instituted a moratorium.²²
- In addition, Protocol No. 13 to the European Convention, which abolishes the death penalty in all circumstances, has been ratified by all member States except Armenia, Azerbaijan, and the Russian Federation.²³
- Recognising and building on this progress, in 2010 the European Court of Human Rights ruled that the death penalty amounted to inhuman or degrading treatment, and thus fell within the prohibition set out in Article 3 of the European Convention on Human Rights.²⁴

¹⁶ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms. Adopted by the Council of Europe on 4 November 1950, entered into force 3 September 1953, Article 3.

¹⁷ Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ETS No. 126. Adopted by the Council of Europe on 26 November 1987, entered into force 1 February 1989.

¹⁸ African Charter on Human and Peoples' Rights, adopted by the eighteenth Assembly of Heads of State and Government, June 1981, Nairobi, Kenya, Article 5.

¹⁹ American Convention on Human Rights, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969, Article 2.

²⁰ European Union (EU), Charter of Fundamental Rights of the European Union, C 364/1, Official Journal of the European Communities, 18 December 2000, Article 4.

²¹ Amnesty International, Death penalty in 2018: Facts and figures, 10 April 2019, <https://www.amnesty.org/en/latest/news/2019/04/death-penalty-facts-and-figures-2018/> (accessed 20 August 2019).

²² Council of Europe, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, Strasbourg, 28 April 1983.

²³ Council of Europe, Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances, Vilnius, 3 May 2002.

²⁴ European Court of Human Rights, *Al-Saadoon and Mufdhi v the United Kingdom* – 61498/08 [2010] ECHR 282.

23. International law imposes specific obligations on States to prevent torture and other ill-treatment, to investigate its occurrences, criminalise complicity in such activities, to bring the perpetrators to justice, and to provide reparations to the victims.²⁵
24. As highlighted by a report of the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe (PACE), the prohibition against torture is sufficiently strict as to require States to take into account consequences of their actions that may occur in other countries, notably by preventing the removal of a person to a country in which they are at real risk of exposure to serious ill-treatment.²⁶

The attendant obligations upon States to regulate the trade in law enforcement equipment and relevant goods

25. Despite States' obligations under international law, torture and other ill-treatment is perpetrated in all regions of the world. International and regional torture prevention monitoring bodies, as well as non-governmental human rights organisations, have documented the use of a range of law enforcement and security equipment and weapons ('tools of torture') in the facilitation and/or commission of torture or other ill-treatment.
26. In recent years, there has been a growing recognition by the international community of the obligations upon *all* States to regulate and restrict the trade in certain law enforcement equipment and weapons, so as to ensure that they are not employed for torture and other ill-treatment. Important advances in this area have been made through a number of multilateral *fora*, notably within the framework of:
- (i) the United Nations;
 - (ii) the Organisation for Security and Co-operation in Europe (OSCE);
 - (iii) the Organisation for Economic Co-operation and Development (OECD);
 - (iv) the European Union (EU), and
 - (v) the Council of Europe.
27. It should be noted that for the foregoing initiatives, the range of goods covered by the proposed or actual instruments or measures varies considerably. A particular point of divergence concerns whether the instrument or measures solely prohibit trade in goods intended/designed for torture and other ill-treatment or whether they additionally control trade in goods readily misused for such purposes (e.g. law enforcement equipment). A second point of divergence relates to whether the instrument or measures explicitly incorporate goods used to carry out the death penalty, and if so, how trade in these goods is addressed.

²⁵ UN, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Adopted and opened for signature, ratification and accession by United Nations General Assembly resolution 39/46 of 10 December 1984 (entry into force 26 June 1987), Articles 2, 4 and 16.

²⁶ Council of Europe, Committee on Legal Affairs and Human Rights, PACE, Strengthening international regulations against trade in goods used for torture and the death penalty, Report Doc. 14454, 15 December 2017, paragraph 4.

(i) The United Nations

28. In Resolution 2001/62, the UN Commission on Human Rights called upon:

“all Governments to take appropriate effective legislative, administrative, judicial or other measures to prevent and prohibit the production, trade, export and use of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment.” It also requested the UN Special Rapporteur on Torture *“to study the situation of trade and production in such equipment, its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and combat its proliferation, and to report thereon to the Commission”*.²⁷

29. In his 2003 Study to the UN Commission on Human Rights,²⁸ UN Special Rapporteur on Torture, Prof Theo Van Boven stated that:

*“the enactment of legal and other measures to stop the production and trade of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment is part of [the] obligation [under Article 2 of the UN Convention Against Torture] of a general nature to prevent acts of torture.”*²⁹

30. Subsequently, in his report to the 2005 Session of the Commission on Human Rights, the then UN Special Rapporteur on Torture recommended, *inter alia*, that States:

- Designate and prohibit the manufacture, transfer and use of certain forms of equipment *“specifically designed for”* or which *“has no or virtually no, practical use other than for the purpose of”* torture, whose use is inherently cruel, inhuman or degrading;
- Introduce strict controls on the export of other security and law enforcement equipment to help ensure that it is not used to inflict torture or ill-treatment;
- Consider the development of an international regulatory mechanism.³⁰

31. The importance of *all* States introducing measures to tackle the trade in ‘tools of torture’ as part of a comprehensive anti-torture strategy has repeatedly been recognised and enunciated by the UN General Assembly (UNGA) in its (now) biannual Omnibus Torture Resolution, most recently, in 2017.³¹

²⁷ UN Commission on Human Rights, Resolution 2001/62, Torture and other cruel, inhuman or degrading treatment or punishment, Article 8.

²⁸ UN Commission on Human Rights, E/CN.4/2003/69, 13 January 2003, Article 14.

²⁹ UN Commission on Human Rights, E/CN.4/2003/69, 13 January 2003, Article 35.

³⁰ UN Commission on Human Rights, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2005/62, 15 December 2004, Article 37.

³¹ The 2017 UNGA Resolution specifically called on all States to: *“take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment”*. See: UN, General Assembly, Resolution on torture and other cruel, inhuman or degrading treatment or punishment, 6 November 2017, Third Committee, Seventy-second session, A/C.3/72/L.20/Rev.1, paragraph 19.

32. In this context, it is important to note the institution of the *Alliance for Torture Free Trade* and the potential development of international measures.

- On 18 September 2017, the EU, Argentina and Mongolia launched the Alliance for Torture Free Trade on the margins of the UN General Assembly meeting in New York.
- To date, over 60 States from all regions of the world (including 41 from the Council of Europe)³² have signed the Alliance's Political Declaration, acknowledging that: *"the availability of goods used for capital punishment, torture and other cruel, inhuman or degrading treatment or punishment enables such practices"*.
- In so doing, these States have committed themselves to *"act together to further prevent, restrict and end trade"* of such goods, and specifically to *"take effective measures, inter alia through legislation and effective enforcement where appropriate, for the restriction of the trade"*.

33. On 24 September 2018, at the 1st Ministerial meeting of the Alliance, member States agreed to initiate concerted Alliance activities through the United Nations to promote development of international measures to tackle the trade in 'tools of torture'.³³

34. In June 2019, over 50 States, many involved in the Alliance, co-sponsored a Resolution to the UN General Assembly calling for the consideration of common international standards on the trade in 'tools of torture'.

35. *Resolution A/73/L.94, Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards*, was adopted by the UN General Assembly on the 28 June 2019.

- The Resolution was adopted with 81 States voting in favour, to 20 against, with 44 abstentions.³⁴
- The Resolution calls on the UN Secretary General to gather member States' views on the feasibility and scope of options to establish common international standards for the import, export, and transfer of goods used for capital punishment, torture, and other ill-treatment, and to submit a report to the 74th UNGA Session.

³² As of 5 August 2019, the following CoE States are members of the Alliance For Torture Free Trade: Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Slovakia, Spain, Sweden, Switzerland, Ukraine, United Kingdom, and the European Union. In addition, two CoE Observer States – Canada and Mexico - are also Alliance Members.

The other Alliance Members are: Argentina, Australia, Brazil, Cape Verde, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Madagascar, Mexico, Mongolia, New Zealand, Nicaragua, Palau, Panama, Paraguay, Seychelles, Uruguay and Vanuatu.

For further information see Alliance for Torture-Free Trade website : <http://www.torturefreetrade.org> (accessed 5 August 2019).

³³ Alliance for Torture-Free Trade Joint Communiqué, New York, 24 September 2018.

³⁴ UN, General Assembly, Resolution Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards, 21 June 2019, Seventy-third session, A/73/L.94.

- The Resolution also requests that the UN Secretary General establish a group of governmental experts, commencing in 2020 to examine the feasibility, scope of goods to be included, and draft parameters, for a range of options to establish common international standards in this area, and to submit a report to the 75th UNGA Session.³⁵

36. In the context of United Nations action, it is worth noting the *2011 UN Guiding Principles on Business and Human Rights (the UN Guiding Principles)*, which set out the State's duty to protect against human rights abuse by third parties, including business enterprises, and the responsibility of corporate actors to respect human rights.

- These UN Principles³⁶, although not legally binding, have significant moral force deriving from their unanimous endorsement by the UN Human Rights Council.
- Furthermore, they are based on existing international legal instruments and principles, and in abiding by the Principles, business enterprises can potentially help reduce the risk of facing legal action as a consequence of their activities.
- These Principles contain provisions – directed at both States and business – that are directly relevant to regulation of the trade in goods used for torture, ill-treatment and the death penalty.
- In particular, Principle 2 urges States to “*set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations*”.
- Principle 3 calls on States to “*enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps.*”
- In addition, Principle 11, directed at businesses themselves, affirms that such “*enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved*”.
- Finally, Principle 13 urges businesses to “*Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts*”.

37. In this context, it is also worth noting the ongoing activities of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights, which is mandated with negotiating a legally binding instrument in this area. Further information on the United Nations action, including on the UN Guiding Principles, appears in Appendix II hereafter.

³⁵ Ibid.

³⁶ UN Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, HR/PUB/11/04, 2011.

(ii) The Organisation for Security and Co-operation in Europe (OSCE)

38. There are indications that trade in the ‘tools of torture’ is also beginning to receive attention in the Organisation for Security and Co-operation in Europe (OSCE). On 12 September 2018, during the OSCE Human Dimension Implementation Meeting, the Office for Democratic Institutions and Human Rights (ODIHR), together with an NGO (the Omega Research Foundation), organised an event with speakers from PACE and the EU to explore existing regional processes to control the trade of equipment that was designed or can be used for torture or other ill-treatment. The issue was subsequently addressed during the OSCE international conference ‘Effective multilateralism in the fight against torture: Trends in the OSCE region and the way forward’ held in Vienna on 5 June 2019, with the involvement of all OSCE participating States. These activities find their inspiration in their 1999 Charter for European Security, and their Resolution on the prevention of torture, abuse, extortion or other unlawful acts, which is part of their Paris 2001 Declaration.

(iii) The Organisation for Economic Co-operation and Development (OECD)

39. It is also worth mentioning the OECD Guidelines for multinational enterprises, which stipulate that “*enterprises should...seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts*” (Chapter IV, Human Rights).

(iv) The European Union (EU)

40. The most important and widely implemented existing relevant control regime within the Council of Europe region is that established by the European Union (EU) through the EU Anti-Torture Regulation. This is legally binding and directly applicable in all (currently 28) EU member States.

41. European Council (EC) Regulation No. 1236/2005 *Concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment* (hereafter the EU Anti-Torture Regulation) was agreed in July 2005³⁷ and came into force on 30 July 2006.

- The EU Anti-Torture Regulation is intended as a “*living instrument*”, with mechanisms allowing the Council, the European Parliament, and the Commission, to collectively respond to developments in the international security marketplace.
- Consequently, the European Commission has twice, in 2011 and 2014, updated and extended the Annexes to the Regulation listing prohibited and controlled goods.
- In 2016, the Council and Parliament, on the initiative of the Commission, amended the Regulation’s operative provisions extensively.

³⁷ EC Regulation 1236/2005 of 27th June 2005 concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, published in Official Journal of the European Union, L200/1, 30th July 2005.

42. A consolidated EU Anti-Torture Regulation, Regulation (EU) 2019/125, was published in January 2019 and came into force on 20 February 2019.³⁸
43. The EU Anti-Torture Regulation has established a harmonised system across the EU for:
- prohibiting the trade (import/export/transit) into, from, or through, all EU member States of equipment and products with “*no other practical use than capital punishment, torture or other cruel, inhuman or degrading treatment,*” and further prohibiting provision of related technical assistance, brokering of trade deals between third countries, or promotion at trade fairs, on TV, radio or the Internet of such goods;
 - regulating and licensing the trade in law enforcement equipment that could be misused for torture and ill-treatment, with States refusing export authorisation “*when there are reasonable grounds to believe that the goods might be used for torture or other [ill-treatment] including judicial corporal punishment*”;
 - regulating and licensing the trade in certain pharmaceutical chemicals to ensure they are not transferred for use in lethal injection executions, without limiting trade of such chemicals for medical, veterinary or other legitimate purposes.
44. The EU Anti-Torture Regulation requires States to publish annual activity reports detailing relevant license applications and authorisations. It includes further measures to facilitate transparency and dissuade one EU Member State “undercutting” another. It also contains provisions facilitating regular review and amendment of prohibited and controlled-goods lists and requires a comprehensive review of the implementation of the Regulation be undertaken every five years.³⁹
45. This system has been praised by the international human rights community and has been recommended as a model for other regions and States to follow.
- A preliminary review, based on publicly available information, shows an apparent reduction in the marketing, to the law enforcement and correctional communities, of a range of products that have no practical use other than torture or ill-treatment (and are prohibited by the EU Anti-Torture Regulation) by EU companies at arms fairs and on the internet, etc.
 - Similarly, the promotion of such goods by non-EU companies at EU arms fairs has also apparently declined.
 - This decline appears to be related to increasing awareness of relevant obligations amongst certain State entities as well as in the law enforcement equipment marketing community.

³⁸ European Union, Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (‘Anti-Torture Regulation’).

³⁹ The first such formal Review has recently been initiated by the Commission which is required to present a “*comprehensive implementation and impact assessment report*” to the European Parliament by 31 July 2020. For further information see: Human rights – review of EU ‘Anti-Torture’ Regulation (2016-20), European Commission, available at: https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-4201434_en (accessed 13 August 2019).

- Consequently, there has been the introduction or strengthening of some preventative measures (e.g. screening by certain arms and security equipment fair organisers of all companies wishing to display products and promotional materials at their events) as well as reactive/remedial measures (e.g. the closure of company stalls found to be displaying prohibited goods at certain arms and security equipment fairs and the removal of relevant company representatives from such events).
- Given the existing scarcity of public information available, it is not possible to determine with certainty the direct effect of the EU Anti-Torture Regulation on the licensed trade of controlled goods (i.e. law enforcement equipment that could be readily misused for torture and ill-treatment and pharmaceutical equipment that could be misused for lethal injection executions).

46. Whilst prohibiting, and consequently apparently reducing, aspects of the trade in some inherently abusive equipment, as well as regulating and licensing the trade in certain legitimate law enforcement equipment and a limited number of anaesthetic chemicals, the adoption of the EU Anti-Torture Regulation and its implementation by EU member States does not appear to have been unduly onerous for these States. In addition, there does not appear to be any publicly available research indicating that such measures have had a detrimental effect upon the legitimate trade in this area.

47. Further information on the EU Anti-Torture Regulation appears in Appendix III hereafter.

National controls

48. In the context of the present study, an information request (see Appendix IV) was sent to participants of the CDDH in 2019, in order to obtain information concerning national controls in this area. The 19 replies received⁴⁰ were taken into account for the present study. An analysis of these replies, together with additional information provided by the European Commission and obtained from responses to a previous Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe questionnaire on this issue, as well as relevant publicly available information, indicates the following:

The provisions of the EU Anti-Torture Regulation are directly applicable to all (currently 28) **EU member States**, and therefore provide a shared minimum standard for regulating trade in a common list of goods.

- At least two EU member States have implemented further national measures that go beyond those in the EU Anti-Torture Regulation; with the UK prohibiting trade in certain goods currently controlled in the EU Anti-Torture Regulation⁴¹, and Spain controlling trade in certain goods not covered by the EU Anti-Torture Regulation⁴².

⁴⁰ Austria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ireland, Monaco, Montenegro, Netherlands, North Macedonia, Poland, Slovak Republic, Slovenia, Switzerland, Turkey and the United Kingdom.

⁴¹ Article 9 of the UK's Export Control Order 2008, provisions supplementing "the torture Regulation", prohibits export of "gang-chains and leg-irons specially designed for restraining human beings" and "portable shock devices".

⁴² Royal Decree 679/2014 of 1 August 2014 establishing the *Regulation on external trade in defence material, other material and dual-use items and technologies* incorporates controls on the export of standard handcuffs.

- Of the 14 EU member States respondents to the CDDH questionnaire:
- None reported the presence of any companies exporting goods currently prohibited under the EU Anti-Torture Regulation to law enforcement agencies for torture or other ill-treatment.⁴³
- Several member States reported the presence of companies manufacturing or supplying certain law enforcement equipment that if used responsibly could have legitimate law enforcement purposes but which potentially could be misused for torture or other ill-treatment. The operation is however subject to control regime set up in accordance with the EU Anti-Torture Regulation and it is limited by relevant criminal sanctions. Another EU Member State (UK) provided details of licenses issued for such controlled law enforcement equipment, noting the exporter/broker may not necessarily be the manufacturer, but may instead be a wholesaler, distributor or re-seller.
- Based on information supplied by EU member States for 2017 and 2018 to the European Commission:
 - (i) In 2017, a total of 301 export authorisations for Annex III goods (law enforcement equipment) or Annex IV goods (pharmaceutical chemicals) were granted by 12 member States;
 - (ii) In 2018, a total of 235 export authorisations for Annex III or IV goods were granted by 12 member States;
 - (iii) The remaining 16 EU member States informed the European Commission that they had not received any applications for export authorisations pursuant to the Regulation in that two-year period;
- During this two-year period, nine applications for an export authorisation were reported as dismissed: four in 2017 and five in 2018. They primarily concerned Annex III goods; and to a lesser extent Annex IV goods;
- Publicly available information regarding the existence and implementation of relevant national control regimes of Council of Europe member States beyond the EU is currently very limited. Similarly, in comparison to EU States, for non-EU Council of Europe member States there is less publicly available information concerning the existence and activities of companies manufacturing, promoting or trading in goods intended for or that could be misused for torture, other ill-treatment and the death penalty.

(v) The Council of Europe

49. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter the CPT) has, on several occasions, highlighted and opposed the use of certain law enforcement devices or equipment, including

⁴³ One EU Member State reported the small-scale manufacture, but not export, of cage beds, consequently employed in certain of its institutional care centres. Another EU Member State reported the presence of suppliers of spiked batons for medieval re-enactments.

electric stun body belts⁴⁴, and cage or net beds⁴⁵. It has also urged the national authorities of certain Council of Europe member States to put an end to unacceptable practices, such as the use of devices on detained persons to block their vision or blindfolding them during transportation or police interviews.⁴⁶

50. The CPT has also made a series of recommendations designed to mitigate the risks of misuse of other law enforcement devices or equipment.⁴⁷
51. The Committee on Legal Affairs and Human Rights of the Parliamentary Assembly (PACE) undertook a recent review to “investigate and report on trade in security equipment in the member States of the Council of Europe, and subsequently develop appropriate rules to prevent the trade or brokering of equipment which could facilitate torture and the application of the death penalty”. Its findings were published in December 2017 for consideration by the Parliamentary Assembly.⁴⁸
52. In January 2018, the PACE, following a review of the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe report, unanimously adopted Recommendation 2123 (2018), *Strengthening international regulations against trade in goods used for torture and the death penalty*.⁴⁹ Under Paragraph 3 of this Recommendation:

*The Parliamentary Assembly considers that on the basis of these existing legal obligations, Council of Europe member States are required to take effective measures to prevent activity within their jurisdictions that might contribute to or facilitate capital punishment, torture and inhuman or degrading treatment or punishment in other countries, including by effectively regulating the trade in goods that may be used for such purposes.*⁵⁰

53. The PACE Recommendation consequently invited the Committee of Ministers to call on Council of Europe member States *inter alia* to:

introduce [national] legislation ... prohibiting trade in [inherently abusive] goods ... and requiring authorisation for trade in the goods [that could be misused for torture, ill-treatment and the death penalty], such authorisation

⁴⁴ CPT, 20th General Report, CPT/Inf(2010)28, 26 October 2010, paragraph 74.

⁴⁵ CPT, Means of restraint in psychiatric establishments for adults (Revised CPT standards), CPT/Inf(2017)6, 21 March 2017.

⁴⁶ For relevant statements and reports see CPT HUDOC CPT Database available at:

<https://www.coe.int/en/web/cpt/database>

⁴⁷ See also: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, “Substantive” sections of the CPT’s General Reports, CPT/Inf/E (2002) 1 - Rev. 2015.

⁴⁸ Committee on Legal Affairs and Human Rights, PACE, Strengthening international regulations against trade in goods used for torture and the death penalty, Report Doc. 14454, 15 December 2017 <http://assembly.CouncilofEurope.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24292&lang=en> (accessed 12 April 2019).

⁴⁹ Parliamentary Assembly of the Council of Europe, Recommendation 2123 (2018), Strengthening international regulations against trade in goods used for torture and the death penalty, 26 January 2018.

⁵⁰ PACE Recommendation 2123 (2018) (26 January 2018), paragraph 3.

to be withheld when there are reasonable grounds for believing that these goods might be used for capital punishment or torture or [ill-treatment]⁵¹.

54. The PACE Recommendation further encouraged the Committee of Ministers to:

- provide “*technical support*” to facilitate member State action in this area⁵², and to:
- *consider adopting a recommendation to member States setting out technical guidance on how to establish and implement an effective regulatory regime, whose effect would be to extend the scope of the approach taken by [the EU Torture Regulation] through harmonised national systems in non-European Union member States, and which should include a mechanism to monitor progress made in implementing the recommendation.*⁵³

55. On 14 September 2018, in its formal response to the PACE Recommendation, the Committee of Ministers of the Council of Europe reiterated its

*unwavering commitment to the absolute prohibition of torture and inhuman or degrading treatment or punishment and to the abolition of the death penalty”. It also emphasised that member States’ compliance with their commitments involves them taking effective measures to prevent activities that might facilitate or contribute to application of the death penalty, torture and inhuman or degrading treatment or punishment in other countries.*⁵⁴

56. Furthermore, the Committee of Ministers stated:

*Where regulating the trade in goods used for torture and the death penalty is concerned, the Committee of Ministers is fully aware of this issue, as demonstrated in its ...Recommendation ...on human rights and business, which set out specific provisions aimed at prohibiting enterprises domiciled within the jurisdiction of member States to trade in such goods and informing those enterprises of the potential impact of their operations on human rights.*⁵⁵

57. However, it recognised:

*the fact that certain goods used to carry out torture and the death penalty can be produced or marketed in Council of Europe member States and exhibited at trade shows or accessible on the websites of European companies is undeniably a source of concern.*⁵⁶

⁵¹ PACE Recommendation 2123 (2018) (26 January 2018) op.cit, Paragraph 10.1.

⁵² PACE Recommendation 2123 (2018) (26 January 2018) op.cit, Paragraph 12.2.

⁵³ PACE Recommendation 2123 (2018) (26 January 2018) op.cit, Paragraph 12.3.

⁵⁴ Council of Europe, Committee of Ministers, Reply to Recommendation: Recommendation 2123 (2018), Adopted at the 1323rd meeting of the Ministers’ Deputies (12 September 2018) 2018 - Fourth part-session.

<https://assembly.Council of Europe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=25042&lang=en>
(accessed 21 May 2019), paragraph 2.

⁵⁵ Ibid, paragraph 5.

⁵⁶ Ibid, paragraph 6.

58. Consequently, the Committee of Ministers stated that:

strengthening international regulations against trade in goods used for torture and the death penalty would be a useful addition to efforts at European and global levels to prohibit torture and inhuman or degrading treatment or punishment and abolish the death penalty". It then tasked the Steering Committee for Human Rights (CDDH) to prepare a study to gauge the feasibility of a legal instrument in this area⁵⁷.

Five out of 19 **Council of Europe non-EU member States** responded to the CDDH questionnaire, providing the following notable information:

- Montenegro has introduced⁵⁸ and North Macedonia is introducing trade controls which essentially replicate those established under the EU Anti-Torture Regulation⁵⁹.
- Switzerland has not introduced specific overarching legislation explicitly regulating or prohibiting goods used in torture or other ill-treatment, but does regulate the trade in certain law enforcement equipment under a range of sectorial legislation including that covering weapons, military equipment and certain civilian goods. Switzerland has introduced trade controls similar to those established in the EU Anti-Torture Regulation with regard to pharmaceutical chemicals that could be misused in lethal injections⁶⁰.
- Monaco and Turkey have not introduced legislation explicitly regulating or prohibiting goods used in torture, other ill-treatment or the death penalty, but both do currently regulate trade in certain relevant law enforcement equipment⁶¹.
- Monaco, North Macedonia, and Switzerland reported the presence of companies manufacturing or supplying certain law enforcement equipment that if used responsibly could have legitimate law enforcement purposes, but which potentially could be misused for torture or other ill-treatment.
- In their responses to a questionnaire on this issue sent to the parliaments of Council of Europe member States by the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe in 2018, Azerbaijan and Norway indicated that no national legislation was currently in place that specifically regulated the trade in goods used for the death penalty or torture.⁶²

⁵⁷ Ibid, paragraph 9.

⁵⁸ *The Law on Foreign Trade in Goods and Services that can be used for the application of the death penalty, the torture or other brutal, inhuman or degrading treatment or punishment, Official Gazette of Montenegro no. 2/18 of 10 January 2018.*

⁵⁹ Response from Republic of North Macedonia to CDDH questionnaire, Appendix IV.

⁶⁰ Response from Switzerland to CDDH questionnaire, Appendix IV.

⁶¹ Responses from Monaco and Turkey to CDDH questionnaire, Appendix IV.

⁶² Responses from Azerbaijan and Norway to Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe questionnaire.

III – CONCLUDING REMARKS REGARDING THE POSSIBILITY TO STRENGTHEN INTERNATIONAL REGULATIONS BY A SPECIFIC CONTRIBUTION OF THE COUNCIL OF EUROPE

59. A small number of companies in certain CoE member States have been involved in the manufacture, promotion or trade in inherently abusive equipment. All such activities should be prohibited. In addition, the promotion and trade in legitimate law enforcement equipment that could be readily misused for torture and ill-treatment is widespread in the Council of Europe region, in terms of both companies and States involved. These activities need to be controlled by *all* Council of Europe member States to ensure that such equipment, and related technical assistance and training, are not transferred to abusive end users in third countries.
60. It appears that the obligations upon EU member States, established under the EU Anti-Torture Regulation, together with associated operative provisions, would be an effective and workable starting point on which to base Council of Europe standards to prohibit trade in certain inherently abusive equipment and control export of certain law enforcement equipment and pharmaceutical chemicals.
61. Following such an approach would have the further benefit of employing standards and a regulatory framework already in place in majority of Council of Europe member States and that has been implemented by these member States for nearly 15 years. The consequent technical experience gained could be shared, as appropriate, with the wider Council of Europe member States.
62. Furthermore, the European Commission, that oversees the implementation of the EU Anti-Torture Regulation by the EU member States, could provide support to individual Council of Europe member States, as appropriate.
63. According to the Steering Committee for Human Rights, it would be highly desirable for the Committee of Ministers to:
 - (i) underline the importance for all Council of Europe member States to have appropriate national legislation to regulate the trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment and the death penalty;
 - (ii) give useful guidance to member States, particularly in light of the wide-ranging contemporary involvement by companies and States throughout the Council of Europe region in the promotion and trade of goods which could be (mis)used for torture and other ill-treatment.
64. To this end, the Committee of Ministers might wish to envisage drafting a non-binding legal instrument - a recommendation - accompanied, if necessary, by appendices reflecting the contents of the present study.
65. If the Committee of Ministers so wishes, the CDDH would be able to submit its draft recommendation after its 93rd meeting in June 2020.

66. In the CDDH's view, a recommendation of the Committee of Ministers would help to:

- ensure that the activities of all Council of Europe member States in this area are in accordance with their existing international and regional human rights obligations to prevent torture, ill-treatment and the death penalty;
- underline the current divergence in national control regimes with, on the one hand, a large group of Council of Europe member States that have restrictive and robust national controls (many implementing the EU Anti-Torture Regulation) and, on the other hand, another significant (though disparate) group of States that have no or only partial controls in this area, or for which no information is available;
- mitigate the danger that the restrictive and robust national controls introduced and implemented by the majority of Council of Europe member States (including those established under the EU Anti-Torture Regulation) may be undercut or otherwise undermined by Council of Europe member States with partial or non-existent national controls that may be more readily exploited by unscrupulous manufacturers, suppliers or brokers.

67. A recommendation of the Committee of Ministers could also recall the obligation upon *all* Council of Europe member States, in accordance with the Article 3 of the European Convention, to:

- prohibit the transfer of equipment which has no practical use other than the death penalty, torture or other ill-treatment;
- regulate and license the trade in law enforcement equipment that could be misused for torture and ill-treatment, with States refusing export authorisation when there are reasonable grounds to believe that the goods might be used for torture or other [ill-treatment] including judicial corporal punishment;
- control the export in certain pharmaceutical chemicals to prevent their misuse in lethal injection executions, without limiting trade of such chemicals for medical, veterinary or other legitimate purposes.

68. Such a recommendation could facilitate member State action:

- raising the awareness of member States' authorities, public opinion, and media, as well as industrial and commercial sectors relevant to the problem of the trade in goods used for torture and other ill-treatment and the death penalty;
- reiterating, including to stakeholders beyond the Council of Europe, the Council of Europe's unwavering commitment to the absolute prohibition of torture and other ill-treatment, and to the abolition of the death penalty;
- reminding member States of their commitment to take effective measures to prevent activities which might facilitate or contribute to the application of the death penalty, torture and other ill-treatment in other countries (both within and outside the Council of Europe region).

69. Lastly, such a recommendation could, in light notably of the existing good practices, encourage member States to:

- (a) establish or strengthen their national legal frameworks and adopt measures to regulate and, as appropriate, prohibit, the trade in equipment, related technical assistance, and training used for the death penalty, torture or other ill-treatment;⁶³
- (b) exchange information to strengthen and harmonise the relevant national legal frameworks, and to facilitate both effective national implementation of the measures and cross-border co-operation among all Council of Europe member States;
- (c) if not yet done, join the Alliance for Torture Free Trade, and make use of and contribute to the Alliance network of global Focal Points for sharing information and best practice and, where appropriate, technical assistance on design and implementation of relevant national legislation;
- (d) promote similar actions in relevant international arenas to strengthen existing international measures against the trade in goods used for torture and other ill treatment and the death penalty. Support and actively participate in the nascent UN process to explore the feasibility and scope of a range of options to establish common international standards in this area;
- (e) establish effective national measures to regulate, monitor, and provide effective training in the appropriate use of security equipment to correctional and law enforcement personnel and thereby prevent misuse of such equipment for torture or other ill-treatment;
- (f) if not yet done, ratify Protocols No. 6 and 13 of the European Convention on Human Rights.

⁶³ It might be useful to consider the interest to indicate in the possible Recommendation that such measures should:

- prohibit export, import, and other transfer of equipment, technical assistance, and training, which have no practical use other than the death penalty, torture or other ill-treatment;
- require prior State authorisation for the export of equipment, technical assistance, and training designed for legitimate law enforcement use, but which are prone to misuse for torture or other ill-treatment. Such authorisation being withheld when there are reasonable grounds for believing that goods might be employed for capital punishment, torture, or other ill-treatment by the end-user;
- control export of certain pharmaceutical chemicals to prevent their misuse in lethal injection executions, without limiting trade of such chemicals for medical, veterinary, or other legitimate purposes.

Appendix I**The production, promotion and trade in the Council of Europe region of law enforcement equipment and weapons which are designed to or can be misused to torture and ill-treat people**

1. The following sections provide an overview of the range of inherently abusive law enforcement equipment, as well as law enforcement equipment that could be readily misused for torture and ill-treatment, that has been manufactured and promoted by companies based in or operating in Council of Europe member States.⁶⁴
2. Where possible, an indication of the range of member States where such commercial activities occur is given. This information has been taken from the marketing materials of the companies themselves. It should be noted that such companies will normally be marketing their products to correctional and law enforcement communities in the Council of Europe region as well as to those in third countries.
3. The following overview, which is based on publicly available information, will therefore certainly underestimate the true scope and scale of the trade. Nonetheless, it is clear that a small number of companies have been involved in the manufacture, promotion or trade of inherently abusive equipment, or the provision of possibly abusive training to law enforcement officials. Such activities, which are inconsistent with the prohibition against torture and other ill-treatment under Article 3 of the European Convention, need to be halted.
4. The promotion and trade in legitimate law enforcement equipment that could be readily misused for torture and ill-treatment is widespread in the Council of Europe region, in terms of companies and States involved. Consequently, such activities need to be controlled to ensure that this equipment, related technical assistance, and training, are not transferred to abusive end users in third countries – such actions being potentially inconsistent with Article 3 of the European Convention.

(a) Inherently abusive law enforcement equipment and weaponsBody worn electric shock devices

5. During the 2014-2018 period, a range of body-worn electric shock devices intended for attachment directly to detainees, which can deliver up to 50,000-volt shocks, have been manufactured and/or promoted by companies in Asia, Africa, the Americas and Europe. These include stun belts, stun vests and stun cuffs, activated by remote control.

⁶⁴ The determination of whether a certain piece of equipment should be considered as inherently abusive or instead categorised as having a legitimate law enforcement purpose, but which could also be readily misused for torture, is sometimes difficult. Consequently, the categorisation for certain goods has been contested, whilst for others such categorisation has changed over time as new evidence of use/misuse has been documented, judicial case law emerged, etc. For clarity this Study has predominately utilised the categories employed in the current iteration of the EU Anti-Torture Regulation (and where a divergence occurs this is noted in the text).

6. Both the UN Committee against Torture⁶⁵ and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁶⁶ have condemned the use of electric shock stun belts and recommended such practices be halted.
7. Prior to the coming into force of the EU Anti-Torture Regulation, one EU Member State imported electric shock stun belts for use in its prison service, and their presence in prisons was subsequently documented by the CPT⁶⁷. Although the EU Member State informed the CPT that “*such equipment had never been used*”, the CPT stated that “*electric stun body belts, without batteries, were occasionally used ... when staff were short of ordinary body belts.*”⁶⁸ Following the CPT intervention, all electric shock stun belts were subsequently removed from service in that EU Member State.
8. From 2014-18 inclusive⁶⁹, body worn electric shock devices have been manufactured and/or promoted by companies in at least 2 Council of Europe member States⁷⁰.
9. For example, the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe study highlighted a Council of Europe-based company which promoted a stun cuff for sale on its website. According to the company material: “*[the] stun-cuffs for hands find their application when taking a prisoner to the court or hospital. In case he attempts to escape the stun-cuffs are activated by remote control and transmit an electric shock of 60.000 Volt. Voltage can be adjusted according to demands of staff. You never saw an escaping person stop so quickly!*”⁷¹
10. Certain companies based in third countries have also marketed such devices at arms and security fairs held in Council of Europe member States. For example, at a French arms and equipment trade fair on 21 November 2017, a Chinese company physically displayed the “*Constraint*” body worn electric shock device, and also distributed

⁶⁵ UN, Committee against Torture, Report of the Committee against Torture, A/55/44, 2000, paragraph 180 (concerning the United States of America).

⁶⁵ UN, Committee against Torture, Report of the Committee against Torture, A/55/44, 2000, paragraph 180 (concerning the United States of America).

⁶⁶ CPT, 20th General Report, CPT/Inf(2010)28, 26 October 2010, paragraph 74.

⁶⁷ Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 8 April 2005, 29 June 2006, paragraph 127.

⁶⁸ Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 24 March to 2 April 2009, 8 June 2010, paragraph 120.

⁶⁹ Events documented as having occurred between 1 Jan 2014 and 31st Dec 2018.

⁷⁰ Companies based in Germany and Switzerland promoted body worn electric shock devices. Both companies subsequently removed all promotional material from their websites.

⁷¹ PKI Electronic Intelligence, *Stun-Cuffs for foot, Stun-Cuffs for hand*, available at: www.pki-electronic.com/products/police-customs-and-military-equipment/stun-cuffs-for-foot-stun-cuffs-for-hand/. Whilst the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe Rapporteur “confirmed that this item still appeared on PKI’s website when accessed on 8 November 2017”, it has subsequently been removed. See Council of Europe, Committee on Legal Affairs and Human Rights, PACE, “Strengthening international regulations against trade in goods used for torture and the death penalty”, Report Doc. 14454, 15 December 2017, paragraph 24.

marketing materials for “*Electric Ankle Cuffs*” described as a “*behaviour controlling system forced to be worn on the prisoner’s ankles*”, capable of delivering a “*high-voltage shock*” of 200 KV.⁷² Because the promotion of such goods is now prohibited in EU member States, once they were appraised of this activity, the French Government and the trade fair organisers acted swiftly, investigating the case, closing down the company’s stall, and removing the company representatives from the trade fair.

Mechanical restraints

11. Rule 47 of the UN Minimum Standard Rules for the Treatment of Prisoners (Nelson Mandela Rules) states that “*the use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.*”⁷³
12. Similarly, under Article 68.1 of the European Prison Rules, adopted by the Committee of Ministers of the Council of Europe, “*the use of chains and irons shall be prohibited.*”⁷⁴
13. Despite these restrictions, the manufacture and/or promotion by companies based in Council of Europe member States, of a range of inherently abusive restraints, has been reported during the 2014-18 period. The following restraints deserve particular attention.
14. Fixed restraints: companies in at least three member States have manufactured and/or promoted, to the law enforcement community, hand or leg restraints designed to be attached to fixed objects. For example, a company based in a member State has manufactured and continues to promote a restraint bracelet incorporating a single handcuff and a “*stationary mount in the form of a rock bolt*”.
15. According to the company information, this restraint device “*allows you to restrict freedom of movement*” of the detainee who will be “*securely chained...to the wall.*”⁷⁵ The company has also manufactured “*Bouquet*” bracelets for restraining up to five detainees together that allows the “*possibility of fixing [a] group ... to a fixed support.*”⁷⁶
16. Weighted restraints: Companies in at least one member State⁷⁷ have manufactured and/or promoted weighted restraints for use by law enforcement officials, at equipment trade fairs and/or on their websites.

⁷² Origin Dynamic electric shock products poster, on display 21 November on Origin Dynamic stall, Milipol 2017, Paris, France; Origin Dynamic product catalogue, distributed at Origin Dynamic stall, Milipol 2017, Paris, France.

⁷³ UN, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), United General Assembly resolution 70/175, annex, adopted on 17 December 2015, Rule 47.

⁷⁴ Council of Europe, Recommendation of the Committee of Ministers to member States on the European Prison Rules, adopted by Committee of Ministers on 11th January 2006 at 952nd meeting of the Ministers’ Deputies, Article 68.1.

⁷⁵ BCS-1 "Prikol" bracelet, NPO-Special Materials Corporation,

http://www.npo-sm.ru/specialnye_sredstva/naruchniki/bks-1_prikol/ (accessed 24 May 2019).

⁷⁶ BCS-1 "Bouquet" Bracelets, NPO- Special Materials Corporation,

http://www.npo-sm.ru/specialnye_sredstva/naruchniki/bks-1_buket/ (accessed 24 May 2019).

⁷⁷ Companies based in Germany manufactured and/or promoted weighted restraints.

17. In addition, a number of companies from third countries have promoted such products at arms and security trade fairs held in member States. For example, three Chinese companies promoted weighted leg irons attached by a chain to handcuffs during an arms fair in a Council of Europe member State in November 2017.
18. *Thumbcuffs*: companies in at least 3 member States⁷⁸ have manufactured and/or promoted thumbcuffs for use by law enforcement officials at equipment trade fairs in the Council of Europe region and/or on their websites. One such company has described its products as “*suitable for plainclothes policemen or in addition to handcuffs*”⁷⁹.
19. During this 2014-2018 period, companies from China were also documented promoting thumbcuffs at arms and security fairs in Council of Europe member States.⁸⁰
20. *Cage and net beds*: the UN Human Rights Committee has repeatedly called for a cessation of the use of cage beds, and has stated that their use “is considered an inhuman and degrading treatment of patients confined in psychiatric and related institutions”.⁸¹ Furthermore, the CPT, in its revised standard-setting document of 2017 concerning “means of restraint in psychiatric establishments for adults”, stated that “*the use of net (or cage) beds should be prohibited under all circumstances.*”⁸²
21. Despite such concerns, the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe highlighted the promotion of such items by two companies in a member State until early 2015⁸³. In addition, in its response to the CDDH questionnaire, a second Council of Europe member State noted information received by its OPCAT Parliamentary Ombudsman following 2017 inspection visits to an institutional care centre for children and young people, as well as to a care home for adults with intellectual difficulties, which indicated use of custom-made cage beds that were manufactured in that country; the Ombudsman called for such use to be abandoned in both sites.
22. *Multipoint restraints*: Some full body restraints can have legitimate employment in restricted and/or carefully controlled medical contexts, for instance, to prevent movement during emergency treatment, or to prevent suicide or self-harm. However, a range of devices incorporating multiple restraints such as shackle boards, shackle beds, and restraint chairs have been commercially promoted for penal and law enforcement use, although they are inappropriate for such use.

⁷⁸ Companies based in Czech Republic, France and Germany manufactures and/or promoted thumbcuffs.

⁷⁹ Nowar catalogue, available at http://www.nowar.de/katalog/standard/001_pers_equipment_accessoires/114_hand_und_fussfesseln/nowar_dau_menfessel/dauemfessel_uk.htm (accessed 22 August 2019).

⁸⁰ See: Omega Research Foundation, *Manufacture, trade and use of ‘tools of torture’ in the Council of Europe*, January 2018, revised June 2018, p.45.

⁸¹ UN, Human Rights Committee, *Concluding Observations of the Human Rights Committee, Slovakia*, 22 August 2003, UN Doc. CCPR/CO/78/SVK, paragraph 13; UN, Human Rights Committee, *Concluding Observations of the Human Rights Committee, Czech Republic*, 9 August

2007, UN Doc. CCPR/C/CZE/CO/2 paragraph 13.

⁸² CPT, *Means of restraint in psychiatric establishments for adults (Revised CPT standards)*, CPT/Inf(2017)6, 21 March 2017.

⁸³ Council of Europe, Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe (15 December 2017) op.cit, paragraph 25.

23. The UN Committee against Torture has recommended the abolition of “*restraint chairs as methods of restraining those in custody*”, as “[t]heir use almost invariably leads to breaches of Article 16 [the prohibition against cruel, inhuman or degrading treatment].” There do not appear to be any companies based in a Council of Europe member State currently manufacturing restraint chairs, shackle boards, or shackle beds.
24. Nonetheless, there are indications that restraint chairs have previously been imported into the Council of Europe region. For example, a restraint chair manufactured by a company in the US, was promoted for sale by a range of companies, previously including a company based in a Council of Europe member State which has offices in four Council of Europe member States.⁸⁴
25. On 29 April 2015, in response to an information request from human rights NGOs, the company stated: “*after reading your report we have decided to delete the mentioned chair out of our assortment and we have also removed it from our website. After taking everything in consideration we come to the conclusion that this product does not match our vision on safety for the prisoners when used wrongly*”⁸⁵.
26. In stark contrast to such welcome and responsible action by a Council of Europe based company, Chinese companies have continued to promote metal restraint chairs, or “*Inquest Chairs*”, in which the detainee is fastened by metal shackles and handcuffs, at Council of Europe arms and security equipment trade fairs.⁸⁶
27. *Blindfolds and hoods*:⁸⁷ although there is no evidence of the manufacture or promotion by Council of Europe based-companies of hoods or blindfolds specifically intended for law enforcement purposes, such devices have been promoted at Council of Europe arms and security exhibitions by non-Council of Europe companies. For example, at an arms trade fair held in a Council of Europe member State in June 2016, a Chinese company promoted the “*WM-01 Mask – for arresting*.” This device consists of a cloth hood designed to completely block vision by covering the detainee’s entire head (including nose and mouth), with the hood being attached to metal handcuffs.⁸⁸ The UN Committee against Torture has stated that blindfolding can constitute torture or other ill-treatment.⁸⁹

⁸⁴ De Ridder Products, http://www.deridderproducts.com/index.php?route=product/product&product_id=1336

(accessed 13 February 2015). As stated in its response to Amnesty International and the Omega Research Foundation, De Ridder subsequently removed all details of the safety restraint chair from its website. See: Amnesty International/Omega Research Foundation, *Grasping the nettle: Ending Europe’s Trade in Execution and Torture Technology*, EUR 01/1632/2015, May 2015.

⁸⁵ E-mail correspondence from representative of De Ridder Products to Amnesty International/Omega Research Foundation, 29 April 2015.

⁸⁶ Omega Research Foundation, *Manufacture, trade and use of ‘tools of torture’ in the Council of Europe*, January 2018 (updated June 2018), p.46.

⁸⁷ Although UN and regional human rights organisations have highlighted the use of hoods and blindfolds in torture and ill-treatment, the EU Torture Regulation does not currently prohibit or control such items, the exception being the control of spit hoods.

⁸⁸ Omega Research Foundation, *Manufacture, trade and use of ‘tools of torture’ in the Council of Europe*, January 2018 (updated June 2018), p.53.

⁸⁹ UN, Committee Against Torture, *Concluding observations of the Committee against Torture: Israel*, 5 September 1997, A/52/44; UN, Committee Against Torture, *Report on Mexico produced by the Committee under article 20 of the convention, and reply from the government of Mexico*. CAT/C/75 (2003), 26 May 2003.

28. The former UN Special Rapporteur on Torture has noted that *“the practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers”*, and recommended that *“blindfolding and hooding should be forbidden.”*⁹⁰

Kinetic impact weapons

29. Some companies, notably in Asia, have developed a range of inherently abusive kinetic impact weapons and devices designed to increase the amount of pain and injury inflicted on subjects. They include spiked batons, spiked shields, and spiked arm armour. Their use would lead to severe physical pain, mental suffering, and serious injury and they therefore cannot legitimately be used for law enforcement.

30. During the 2014-2018 period, a company in a member State⁹¹ promoted spiked kinetic impact devices for use by law enforcement officials.

31. In addition, Chinese companies marketed a variety of spiked shields and batons at 2015 and 2017 security fairs in a Council of Europe member State, including the physical display of a spiked shield (with electric shock function) in 2015.⁹²

(b) Law enforcement equipment that could be readily misused for torture and ill-treatment

Direct contact electric shock weapons

32. During the 2014-2018 period, companies in at least 14⁹³ Council of Europe member States have manufactured and/or promoted direct contact electric shock devices and weapons – including electric shock batons, stun guns, and shock shields – for use by correctional or law enforcement officials.

33. These companies promote their products domestically, to other member States, and to third countries. For example, a particular Council of Europe-based company produces a range of electric shock weapons, which it promotes to the global law enforcement community on its website and at arms and security equipment trade fairs. On its website, the company currently lists dealers and representatives in three Council of Europe member States and as well as in three OSCE States (Belarus, Kazakhstan, Uzbekistan), six Asian States (Bangladesh, Indonesia, Malaysia, Pakistan, Sri Lanka, Vietnam), six Middle Eastern and North African States (Egypt, Iran, Israel, Jordan, Saudi Arabia, Tunisia), and two African States (Nigeria and South Africa).⁹⁴

⁹⁰ UN, Commission on Human Rights, Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 2001/62, E/CN.4/2002/76, 27 December 2001.

⁹¹ A company in Cyprus promoted spiked kinetic impact devices.

⁹² See Council of Europe, Committee on Legal Affairs and Human Rights, PACE, Strengthening international regulations against trade in goods used for torture and the death penalty, Report Doc. 14454, 15 December 2017, paragraph 22.

⁹³ Companies based in Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Hungary, Poland, Portugal, Russian Federation, Slovenia, Spain, Ukraine manufactured and/or promoted direct contact electric shock devices for use by correctional or law enforcement officials.

34. Companies from Asia have also regularly promoted such devices in the Council of Europe region. For example, at an arms and security trade fair held in a Council of Europe member State from 29 April – 3 May 2019 a Chinese company distributed marketing materials for three types of “*electrical baton*” whilst a second Chinese company promoted an Electric Shield that can deliver shocks of at least 80,000 volts.⁹⁵
35. Both the European Court of Human Rights and the CPT have expressed “*strong reservations*” about the use of electric shock equipment in direct contact mode, noting that “*properly trained law enforcement officials will have many other control techniques available to them when they are in touching distance of a person who has to be brought under control*”.⁹⁶ The CPT have raised concerns about the arming of custodial staff with electric shock weapons in certain Council of Europe member States and have recommended that “*immediate steps be taken to put a stop to custodial staff in police arrest houses routinely carrying electro-shock weapons*”.⁹⁷

Projectile electric shock weapons

36. The UN Committee against Torture has recommended that projectile electric shock weapons (often called tasers) “*are used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only*”.⁹⁸
37. Furthermore, the Committee recommended “*establishing a high threshold for their use...expressly prohibiting their use on children and pregnant women... [and that such weapons] should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty*”.⁹⁹
38. Most projectile electric shock weapons also incorporate a drive-stun mode where the device can be used as a *de facto* direct contact electric shock weapon. This capability is prone to abuse, potentially including for torture and other ill-treatment. In a 2019 periodic review of a Council of Europe member State, the UN Committee against Torture recommended that “*use [of projectile electric shock weapons] in drive stun mode*” should be “*prohibited*”¹⁰⁰.

⁹⁴ Dealers and representatives of companies, March company website, <https://russian-shockers.com/contacts/predstaviteli.html> (accessed 4 June 2019)

⁹⁵ Anti-riot and counter-terrorism brochure, Norinco, undated, distributed at IDEF 2019 exhibition held from 30 April – 3 May 2019, pp.38-9; Personal Protection Equipment brochure, Electric Shield, Yuanfar International, undated, distributed at IDEF 2019 exhibition held from 30 April – 3 May 2019, p.16.

⁹⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT Standards, “Substantive” sections of the CPT’s General Reports, CPT/Inf/E (2002) 1 - Rev. 2015, p. 111; European Court of Human Rights, Case of Anzhelo Georgiev and Others v. Bulgaria, judgment of 30 September 2014, paragraph 76.

⁹⁷ See for example: CPT, Report to the Lithuanian Government on the visit to Lithuania carried out by the CPT from 27 November to 4 December 2012, 4 June 2014.

⁹⁸ UN Committee against Torture, Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN doc. CAT/C/GBR/CO/5, 24 June 2013, paragraph 26.

⁹⁹ Ibid.

¹⁰⁰ UN Committee against Torture, Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/6), 16 May 2019 (CAT/C/SR.1754), paragraph 29.

39. The international office for a large US-based company producing projectile electric shock weapons is headquartered in a Council of Europe member State and this company has national websites in a further six Council of Europe member States.¹⁰¹ During the 2014-2018 period, this company's products have also been promoted by other companies in at least five Council of Europe member States¹⁰². In the same period, companies in at least three Council of Europe member States¹⁰³ have manufactured and/or promoted other projectile electric shock weapons for use by law enforcement officials.

Mechanical restraints¹⁰⁴

40. If used appropriately, in conformity with international human rights law and standards, certain mechanical restraints, such as ordinary handcuffs and leg cuffs, can be legitimately used to ensure the safe detention and restraint of detainees.

41. The circumstances and limits within which these restraints are used should be consistent with international human rights standards, notably the Nelson Mandela Rules, and regional restrictions, notably the European Prison Rules. Rule 43 of the Mandela Rules, for instance, states that "*instruments of restraint shall never be applied as a sanction for disciplinary offences.*"¹⁰⁵

42. However, human rights organisations have documented the alleged misuse of handcuffs and/or leg cuffs to conduct or facilitate torture and other ill-treatment in all regions of the world.¹⁰⁶

43. During the 2014-2018 period, companies in at least 26 Council of Europe member States¹⁰⁷ have manufactured and/or promoted mechanical restraints for use by correctional and law enforcement officials.

Riot control agents

44. Riot control agents (RCAs) are a range of toxic chemicals, including pepper spray and tear gas, which are commonly used (for example in hand-thrown or weapon-launched RCA grenades and cartridges, or via water cannon) for controlling or dispersing crowds; and are also employed (in hand-held sprays) against individuals or a small number of people, for example to facilitate arrest.

¹⁰¹ The international office for a large US-based company producing projectile electric shock weapons is headquartered in the Netherlands and has national websites in France, Germany, Italy, Poland, Spain and the UK.

¹⁰² This company's products have been promoted by other companies in at least Croatia, Cyprus, Netherlands, North Macedonia and Spain.

¹⁰³ Companies in at least Czech Republic, Russian Federation and Turkey have manufactured and/or promoted other projectile electric shock weapons for use by law enforcement officials.

¹⁰⁴ Although UN and regional human rights organisations (notably the CPT) have highlighted the misuse of ordinary handcuffs in torture and ill-treatment, the EU Torture Regulation does not currently control such items.

¹⁰⁵ UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), United General Assembly resolution 70/175, annex, adopted on 17 December 2015, Rule 43.

¹⁰⁶ For further information and indicative cases see Amnesty International and Omega Research Foundation reports listed in footnote 4.

¹⁰⁷ Copies of illustrative relevant company marketing materials are held by the CDDH Secretariat.

45. RCAs can pose a risk of unnecessary harm if used without following the manufacturers' instructions or in contravention of human rights standards. Of particular concern is the use of RCAs in excessive quantities or in confined spaces where people cannot disperse and the toxic properties of the agents can lead to serious injury or death, particularly to vulnerable individuals.
46. The European Court of Human Rights has indicated that "*the unwarranted use of tear gas by law enforcement officers is not compatible with the prohibition of ill-treatment*".¹⁰⁸ With regard to places of detention, the CPT has repeatedly recommended that pepper spray and tear gas should not be used in confined spaces, nor on an individual already brought under control, as well as expressing "*serious reservations*" about its use in open space, stating that there should be clearly defined safeguards in place if it needs to be used exceptionally.¹⁰⁹
47. The European Court of Human Rights has endorsed these concerns and recommendations.¹¹⁰
48. During the 2014-2018 period, companies in at least 27 Council of Europe member States¹¹¹ have manufactured and/or promoted riot control agents for use by law enforcement officials. The products of certain Council of Europe-based companies have been transferred to third countries where widespread and serious misuse of riot control agents has been documented, as highlighted by the UN¹¹² and in the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe report.¹¹³

Kinetic impact devices¹¹⁴

49. During the 2014-2018 period, companies in at least 21 member States¹¹⁵ have manufactured and/or promoted kinetic impact projectiles – such as plastic and rubber bullets – and associated launchers for use by law enforcement officials.

¹⁰⁸ Case of İzci v. Turkey, App. no.42606/05, judgment of 23 July 2013, paragraph 62.

¹⁰⁹ See for example, CPT, Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 19 to 30 March 2007, paragraph 79.

¹¹⁰ Case of Ali Güneş v. Turkey, judgment of 10 April 2012, paragraphs 39-41.

¹¹¹ Companies in at least Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom have manufactured and/or promoted riot control agents for use law enforcement officials.

¹¹² UN Group of Experts on Côte d'Ivoire, Final Report, prepared in accordance with paragraph 14 of Security Council resolution 1980 (2011), issued by the UNSC on 14 April 2012, UN doc. S/2012/196, paragraph 58.

¹¹³ See Council of Europe, Committee on Legal Affairs and Human Rights, PACE, Strengthening international regulations against trade in goods used for torture and the death penalty, Report Doc. 14454, 15 December 2017, paragraph 27.

¹¹⁴ Although UN and regional human rights organisations have highlighted the misuse of hand-held kinetic impact weapons and launched kinetic impact weapons in torture and ill-treatment, the EU Torture Regulation does not currently control such items.

¹¹⁵ Companies in at least Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Hungary, The Netherlands, North Macedonia, Norway, Portugal, Romania, Russian Federation, Spain, Sweden, Switzerland, Ukraine, and the United Kingdom have manufactured and/or promoted kinetic impact projectiles – such as plastic rubber bullets – and/or associated launchers for use by law enforcement officials.

Companies in at least 26 member States¹¹⁶ have manufactured and/or promoted hand-held kinetic impact weapons – such as batons or truncheons – for use by law enforcement officials. If employed in conformity with international human rights law and standards, in particular those regarding the use of force, certain types of such weapons can have a legitimate role in law enforcement.

50. However, human rights organisations have regularly documented their widespread abuse – in both custodial and extra-custodial settings – to inflict unnecessary or excessive force, which has amounted in certain cases to torture or other ill-treatment, or has resulted in serious injury or death.

Training and technical assistance

51. In his 2004 report to the Commission on Human Rights, the UN Special Rapporteur on Torture warned that if training to “*military, security or police forces of foreign States*” were not “*stringently controlled and independently monitored, there is a danger that [it would] be used to facilitate torture and other ill-treatment.*”¹¹⁷
52. A number of Council of Europe member States’ entities, and companies based in Council of Europe member States, have provided technical assistance and/or associated training to law enforcement officials from other member States and to third countries.
53. Whilst professional training of correctional and law enforcement officials in the appropriate use of legitimate security equipment and restraints can reinforce and operationalise human rights standards and good practice, human rights NGOs and the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe have reported instances where law enforcement officials have been trained in potentially abusive methods.
54. For example, a company based in a Council of Europe member State supplying security equipment, also trains law enforcement officials in their use. This training has included employment of restraints to place detainees in hyper-extended positions (hog-tying) and also in the use of batons for neck holds. Such techniques are similar to those the CPT has recommended be halted. Images and videos on the company website have shown training in such techniques to a range of law enforcement organisations in Europe, Asia, Africa, and the Americas.¹¹⁸

Death penalty equipment

55. Whilst the main focus of this study was upon law enforcement equipment and weapons used in torture and other ill-treatment, a brief examination of execution technologies was also undertaken.

¹¹⁶ Companies in at least Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, North Macedonia, Poland, Russian Federation, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Turkey, Ukraine and the United Kingdom have manufactured and/or promoted hand-held kinetic impact weapons – such as batons or truncheons – for use by law enforcement officials.

¹¹⁷ Report of the UN Special Rapporteur on the question of torture, Theo van Boven, Commission on Human Rights (E/CN.4/2005/62), 15 December 2004, paragraph 31.

¹¹⁸ Council of Europe, Committee on Legal Affairs and Human Rights, PACE, Strengthening international regulations against trade in goods used for torture and the death penalty, Report Doc. 14454, 15 December 2017, paragraph 30; Omega Research Foundation, Manufacture, trade and use of ‘tools of torture’ in the Council of Europe, January 2018, revised June 2018, pp.72-73.

Specifically, designed equipment

56. There have been previous reports of the manufacture and transfer of execution technologies from certain Council of Europe member States (i.e. at least one gallows for execution by hanging was reportedly exported from a Council of Europe member State to the United Arab Emirates in 1987).¹¹⁹ No evidence was found of the contemporary commercial production, promotion or trade by Council of Europe companies of equipment specifically designed for the death penalty such as: gallows¹²⁰, hanging ropes, gas chambers, electric chairs, or automatic lethal injection devices, during the 2014-18 period.

Misuse of pharmaceutical chemicals for lethal injection executions

57. In China, Guatemala, the Maldives, Papua New Guinea, Thailand, Vietnam and the United States, the intravenous administration of a lethal dose of certain pharmaceutical chemicals ('lethal injection') is provided for as a method of execution under the law.¹²¹

58. Until 2010- 2011, the majority of US States that carried out lethal injection executions employed a 'three-drug' protocol comprising sodium thiopental to induce general anaesthesia, pancuronium bromide to cause muscle paralysis, including of the diaphragm, and potassium chloride to stop the heart.

59. However, Hospira, the sole US manufacturer of sodium thiopental, suspended production of the drug in 2010, and in early 2011 withdrew from the market altogether. As a result, a number of US States started attempting to source stocks held in other countries, including certain European countries.¹²²

60. Responding to such activities, in December 2011, the European Commission revised the EU Anti-Torture Regulation to include binding measures, to control the export from all EU member States of certain dual-use drugs which have legitimate medical uses but that could also be employed for the execution of human beings, such as sodium thiopental and pentobarbital.¹²³

¹¹⁹ Amnesty International UK Section, *Repression Trade* (UK) Limited, 1992, pp.16-18.

¹²⁰ In its response to the CDDH questionnaire one CoE member State did, however, note the potential for its timber to be employed as components of gallows.

¹²¹ Amnesty International, *Execution by lethal injection: a quarter century of state poisoning*, ACT 50/007/2007, 4 October 2007; Amnesty International, *Maldives to resume executions after over 60 years* ASA 29/6764/2017, 20 July 2017; Amnesty International, *Further information: Papua New Guinea plans for executions*, ASA 34/003/2013, 4 June 2013.

¹²² See for example: *Reprieve, Briefing: Lethal injections drugs trade*, Submission to the All Party Parliamentary Group, UK, February 2011; Amnesty International and Omega Research Foundation, *No more delays*, ACT 30/062/2012; Foya, M. *Dealing with medicines misuse in execution by lethal injection*, the *Pharmaceutical Journal*, 10 January 2018.

¹²³ EU, European Commission, *Commission Implementing Regulation (EU) No: 1352/2011 of 20 December 2011, amending Council Regulation (EC) No 1236/2005*, Official Journal of the European Union, 21 December 2011, L.338/31, Annex III, Article 4.

61. These provisions were subsequently revised as part of a comprehensive review and overhaul of the EU Anti-Torture Regulation, following recommendations of a Commission's expert group, which included medical experts and representatives from the NGOs Reprieve and the Omega Research Foundation, and which was informed by submissions on this issue from pharmaceutical companies.
62. Consequently, in December 2016, as part of its package of measures to strengthen the EU Anti-Torture Regulation, the EU introduced a system of Union General Export Authorisations for EU exports of certain pharmaceutical chemicals to States that have abolished the death penalty; and individual or global export authorisations to non-abolitionist States.¹²⁴ This system was designed to ensure effective regulation of these pharmaceutical chemicals without restricting or delaying the transfer of such chemicals for medical, veterinary or other legitimate purposes, and without creating a disproportionate burden on States or pharmaceutical chemical manufacturers.
63. In addition to measures introduced by certain Council of Europe States, over 50 global healthcare companies have taken unilateral action to prevent their products being directly acquired by or diverted to those who would misuse them in lethal injection executions, specifically in the US.¹²⁵
64. During the 2014-2018 period there were no substantiated public reports of the intentional transfer by entities based in the Council of Europe member states of relevant pharmaceutical chemicals for the purpose of lethal injection to the US or elsewhere. However, there have been reports of subsequent (and on-going) attempts by a number of US States to acquire a growing range of pharmaceutical chemicals for lethal injection executions and to use secrecy laws to hide the source of their execution drugs.¹²⁶
65. In the light of such developments, in September 2017 the Organisation for Economic Co-operation and Development (OECD) promoted good practice by the pharmaceutical industry in this area, stating that: *"in the face of increased efforts by states to shield where and how they have procured medicines for executions, companies should adopt a clear and unequivocal position opposing such secrecy and take active steps to ensure their contracts and position are respected."*¹²⁷

¹²⁴ EU, Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1236/2005, December 2016.

¹²⁵ For further information about the pharmaceutical industry efforts to prevent misuse of their products for capital punishment including details of public statements made on this subject by pharmaceutical manufacturers and distributors, see Reprieve's Lethal Injection Information Centre website, <https://lethalinjectioninfo.org/industry-statements/> (accessed 9 August 2019).

¹²⁶ See for example: Foya, M. Dealing with medicines misuse in execution by lethal injection, the Pharmaceutical Journal, 10 January 2018; Pilkington E. States are stockpiling lethal injection drugs that could be used to save lives, The Guardian, 20 April 2017; for original reports and further press reports see website of Reprieve's Lethal Injection Information Centre <https://lethalinjectioninfo.org/press/>

¹²⁷ Ministry of Foreign Affairs. National Contact Point. OECD Guidelines for Multinational Enterprises. Evaluation of the final statement of 11 April 2016: Bart, attorney vs. Mylan. Available at: <https://www.oecdguidelines.nl/documents/publication/2017/09/27/evaluation-final-statement-stapert-vs-mylan> (accessed 12 August 2019).

66. Concerns about continuing clandestine attempts by certain US States to acquire execution drugs¹²⁸ are exacerbated by the recent US Justice Department declaration that the US Food and Drug Administration (FDA) lacks legal authority to regulate drugs that are used to carry out lethal injection executions, opening the door for US States to import such pharmaceutical chemicals even if the FDA has not approved their use.¹²⁹

¹²⁸ See for example: DeMillo, A. Drugmakers object to Arkansas execution secrecy measure, Associated Press, March 29, 2019; Makers of Ohio death drugs oppose their use in executions, The Columbus Dispatch, April 2019; for original reports and further press reports see website of Reprieve's Lethal Injection Information Centre <https://lethalinjectioninfo.org/press/>

¹²⁹ New York Times, *Justice Dept. Stops F.D.A. From Regulating Death-Penalty Drugs*, 14 May 2019, <https://www.nytimes.com/2019/05/14/us/politics/justice-dept-fda-death-penalty-drugs.html> (accessed 12 August 2019).

Appendix II

The United Nations action

1. In Resolution 2001/62, the UN Commission on Human Rights called upon:

“all Governments to take appropriate effective legislative, administrative, judicial or other measures to prevent and prohibit the production, trade, export and use of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment” and requested the UN Special Rapporteur on torture *“to study the situation of trade and production in such equipment, its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and combat its proliferation, and to report thereon to the Commission”*¹³⁰.

2. In a 2003 response, the then UN Special Rapporteur on Torture, Prof. van Boven, submitted a *“Study on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms”* to the UN Commission on Human Rights¹³¹.
3. Whilst the study noted that *“international human rights law has up to now mainly addressed the question of the circumstances in which such equipment can be used”*; the Special Rapporteur argued that controlling the trade of such equipment also form part of every State’s obligations under the UN Convention against Torture:

“[T]he Special Rapporteur reminds States parties to the [UN] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of its article 2 which provides that ‘each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction’. He believes that the enactment of legal and other measures to stop the production and trade of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment is part of this obligation of a general nature to prevent acts of torture.”

132

4. Consequently, in his subsequent report to the 2005 Session of the Commission on Human Rights, the UN Special Rapporteur on Torture recommended, *inter alia*, that States:
 - Designate and prohibit the manufacture, transfer and use of certain forms of equipment “specifically designed for” or which “has no or virtually no, practical use other than for the purpose of torture, whose use is inherently cruel, inhuman or degrading”;
 - Introduce strict controls on the export of other security and law enforcement equipment to help ensure that it is not used to inflict torture or ill-treatment;

¹³⁰ Council of Europe, Committee on Legal Affairs and Human Rights, PACE, “Strengthening international regulations against trade in goods used for torture and the death penalty”, Report Doc. 14454, 15 December 2017, paragraph 4.

¹³¹ UN Commission on Human Rights, E/CN.4/2003/69, 13 January 2003, Article 14.

¹³² UN Commission on Human Rights, E/CN.4/2003/69, 13 January 2003, Article 35.

- Consider the development of an international regulatory mechanism.¹³³

The importance of all States introducing measures to tackle the trade in ‘tools of torture’ as part of a comprehensive anti-torture strategy has repeatedly been recognised by the UN General Assembly (UNGA) in its (now) biannual Omnibus Torture Resolution, which has consistently urged States to introduce effective controls in this area.

5. The latest Torture Resolution of November 2017 called upon all States to:

“take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment”¹³⁴.

6. Likewise, the importance of this approach has been recognised by a growing number of individual member States¹³⁵, and regional and international human rights bodies including UN Special Rapporteurs on Torture, the UN Commission on Human Rights¹³⁶, the UN Committee Against Torture¹³⁷, the African Commission on Human and People’s Rights¹³⁸ and the Council of Europe.¹³⁹ In this regard, an online platform concerning human rights and businesses is currently being developed by the Secretariat of CDDH and the relevant departments of the Council of Europe in charge of the co-operation in the field of human rights (HELP Programme). This platform aims to educate member States of the Council of Europe, businesses and civil society to promote the exchange of information and good practices relating to this matter.
7. In September 2018, Michelle Bachelet, the current UN High Commissioner for Human Rights declared that:

“Freedom from torture is an absolute right. In all circumstances, in all countries. It is shocking that in spite of this universal ban, the “tools of torture” continue to be freely traded across the globe. It is time to match the global consensus on the need to eliminate torture with concrete action to end this trade... Under the Convention Against Torture, States must prohibit and refrain from torture and they must also take effective steps to prevent it. To allow these products to be made because the eventual victims live in another country is not an option.”¹⁴⁰

¹³³ UN Commission on Human Rights, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2005/62, 15 December 2004, Article 37.

¹³⁴ UN, General Assembly, Resolution on torture and other cruel, inhuman or degrading treatment or punishment, 6 November 2017, Third Committee, Seventy-second session, A/C.3/72/L.20/Rev.1, paragraph 19.

¹³⁵ Notably over 60 States of the Alliance for Torture Free Trade, see Section 3.5 of this Study.

¹³⁶ UN Commission on Human Rights, Resolution 2001/62, 25 April 2001.

¹³⁷ UN, Report of the Committee against Torture Thirty-ninth session (5-23 November 2007) Fortieth session (28 April-16 May 2008) General Assembly Official Records Sixty-third Session Supplement No. 44.

¹³⁸ Commission on Human and People’s Rights, Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa, paragraph 14.

¹³⁹ Council of Europe, Business and Human Rights, Recommendation CM/REC(2016)3 of the Committee of Ministers to member States, adopted on 2 March 2016, paragraph 24.

¹⁴⁰ Statement by Michelle Bachelet, UN High Commissioner for Human Rights, First Ministerial Meeting of the Alliance for Torture Free Trade, 24 September 2018.

<http://webtv.un.org/assets/rss/video3804186128001/watch/first-ministerial-meeting-of-the-alliance-for-torture-free-trade/5839498628001/?term=&sort=popular&page=11> (accessed 21 May 2019).

8. Specific reference should be made to the UN Guiding Principles on Business and Human Rights, which contain provisions – directed at both States and business – that are directly relevant to regulation of the trade in goods used for torture, ill-treatment, and the death penalty. In particular, Principle 2 urges States to “*set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations*”, and Principle 3 calls on States to “*enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps.*”
9. Principle 11, directed at businesses themselves, declares that such “*enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*” The attendant Commentary notes:

“The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.”

10. All companies based or operating in the Council of Europe member States that manufacture, promote, or trade in inherently abusive law enforcement equipment and weapons, are in breach of Principle 11 and should cease such activities immediately.
11. Principle 17, which is also directed at businesses, recommends that they conduct ‘human rights due diligence’ which “*should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed*”¹⁴¹ and should cover “*adverse human rights impacts which may be linked directly to its operations, products or services by its business relationships*”¹⁴².
12. The attendant commentary on this provision notes that:

*“Questions of complicity may arise when a business enterprise contributes to [...] adverse human rights impacts caused by other parties... [M]ost national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases... The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.”*¹⁴³

¹⁴¹ UN Guiding Principles on Business and human Rights (2011) op.cit., Principle 17.

¹⁴² Ibid, Principle 17a.

¹⁴³ UN Guiding Principles on Business and human Rights (2011) op.cit., Commentary, Principle 17.

13. Principle 17 is potentially applicable to those Council of Europe based companies manufacturing, promoting and trading in law enforcement equipment, weapons, and other goods that have a legitimate use, but could be readily misused for torture and other ill-treatment. These companies may be required to ensure their products are not transferred to abusive end users.

14. Within the Council of Europe, the 2016 Committee of Ministers' Recommendation to member States on human rights and business¹⁴⁴, intended to contribute to the effective implementation of the UN Guiding Principles at a European level, contains detailed recommendations in Appendix 3 relevant to the trade in goods used for torture and the death penalty. Paragraph 24 states that:

“member States should ensure that business enterprises domiciled within their jurisdiction do not trade in goods which have no practical use other than for the purpose of capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment.”¹⁴⁵

15. Other provisions of relevance include paragraph 27, which states that:

“member States should be in a position to inform business enterprises...on the potential human rights consequences of carrying out operations in...sectors or areas that involve a high risk of negative impact on human rights [...] [and] should facilitate business enterprises' adherence to sector-specific standards, such as...the International Code of conduct for Private Security Providers. Member States should consider performing a sector-risk analysis in order to identify the sectors in which activities are most at risk of having a negative impact on human rights.”¹⁴⁶

16. There are also provisions addressing the role of competent authorities in Council of Europe member States in ensuring human rights “due diligence” by businesses. Paragraph 22 states that:

“member States should apply additional measures to require business enterprises to respect human rights, including, where appropriate, by carrying out human rights due diligence, that may be integrated into existing due diligence procedures, when member States: own or control business enterprises; grant substantial support and deliver services through agencies, such as export credit agencies and official investment insurance or guarantee agencies, to business enterprises; grant export licenses to business enterprises.”¹⁴⁷

¹⁴⁴ Council of Europe, Business and Human Rights, Recommendation CM/REC(2016)3 of the Committee of Ministers to member States, adopted on 2 March 2016.

¹⁴⁵ Ibid, paragraph 24.

¹⁴⁶ Ibid, paragraph 27.

¹⁴⁷ Ibid, paragraph 22; see also paragraphs 20 and 28.

Appendix III**The European Union action**

1. The EU Anti-Torture Regulation distinguishes between three distinct categories of items whose trade should be regulated.
2. Annex II of the EU Anti-Torture Regulation lists equipment and products with “*no other practical use than capital punishment, torture or other cruel, inhuman or degrading treatment*”. This category of goods is banned from all trade (import/export/transit) into, from, or through all EU member States, and the brokering of trade deals between third countries is also prohibited. The provision of any technical assistance related to such goods, specifically including training in their use, is also prohibited. In addition, advertising of such goods on the Internet, TV, radio, or at trade fairs is prohibited.
3. Annex II includes detailed lists of items under the following headings:
 - Goods designed for the execution of human beings, and certain of their components;
 - Goods which are not suitable for use by law enforcement authorities to restrain human beings;
 - Portable devices which are not suitable for use by law enforcement authorities for the purpose of riot control or self-protection;
 - Certain types of whips.
4. Annex III of the Regulation lists goods that have been designed for other purposes (specifically law enforcement) but could be misused for torture or ill-treatment. This category is subject to export controls, requiring authorisation, on a case by case basis, by national authorities. No authorisation should be granted “*when there are reasonable grounds to believe that [Annex III goods] might be used for torture or other [ill-treatment] including judicial corporal punishment*” in the third country.
5. Annex III currently includes detailed lists of items under the following headings:
 - Goods designed for restraining human beings;
 - Weapons and devices designed for the purpose of riot control or self-protection;
 - Weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection and certain related substances.
6. Finally, Annex IV lists certain anaesthetic chemicals which could be misused for the execution of human beings by means of ‘lethal injection’. A distinct license authorisation process has been established to control the export of such anaesthetic chemicals to prevent their transfer for use in lethal injection executions without limiting trade of such chemicals for medical, veterinary or other legitimate purposes.
7. The Regulation incorporates an “*urgency procedure*” that enables the EU to quickly prohibit transfers of new types of equipment judged to be inherently abusive; and control exports of new equipment that could be readily misused for torture, or new pharmaceutical chemicals that could be misused for lethal injection executions.

8. In order to facilitate transparency and dissuade EU member States “*undercutting*”¹⁴⁸ one another, the EU Anti-Torture Regulation requires the competent authorities of EU member States to notify all other member States’ authorities and the European Commission when they refuse to issue an authorisation or annul an existing authorisation. Subsequently, any EU member State considering authorising “*an essentially identical transaction*” in the next three years must consult the original denying State. Although the power to take the final decision remains with individual EU member States, if a licence is granted in these circumstances, the licensing member State will have to provide a detailed explanation of its reasoning to the European Commission and all member States.
9. All EU member States are required to prepare (and send the European Commission a copy of) a public annual activity report concerning the number of applications received, the goods and countries concerned, and the decisions taken on these applications. All EU member States have reported to the European Commission for 2017 and 2018. Public transparency in this area by EU member States appears to be more limited. While certain EU member States have released public reports (or provided other information) on the nature of their license authorisations of Regulation controlled goods, according to the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe study “*few [EU member States] have done so fully or systematically*”.¹⁴⁹
10. The European Commission is required to prepare its own annual report comprised of the national annual reports, which should be made publicly available. The Commission has been working with EU member States to prepare a report that will cover State authorisations for both 2017 and 2018, which was expected to be published by November 2019.
11. The EU Anti-Torture Regulation also requires EU member States to put in place “*effective, proportionate and dissuasive*” penalties for breaches of the Regulation.
12. An *Anti-Torture Coordination Group* – chaired by the Commission and comprised of representatives of all EU member States – has been established to “*examine any questions concerning the application of this Regulation*”. The European Commission is required to submit an annual report in writing to the European Parliament on the Group’s activities.
13. The European Commission is also required to review the implementation of the Regulation by 31 July 2020, and every five years thereafter, and to present a “*comprehensive implementation and impact assessment report to the European Parliament and to the Council, which may include proposals for its amendment*”. The European Commission is currently engaged in the first such review process.¹⁵⁰

¹⁴⁸ In this case, undercutting is taken to mean the practice whereby one State allows the transfer of essentially identical law enforcement equipment or other relevant goods to an end user in a third country that another State had previously refused to authorise due to concerns that such goods would be used in torture, ill-treatment or the death penalty.

¹⁴⁹ Council of Europe, Committee on Legal Affairs and Human Rights, PACE, Strengthening international regulations against trade in goods used for torture and the death penalty, Report Doc. 14454, 15 December 2017, paragraph 31.

¹⁵⁰ For further information about this process and timeline see: Human rights – review of EU ‘Anti-Torture’ Regulation (2016-20), https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2019-4201434_en (accessed 13 August 2019).

14. The EU Anti-Torture Regulation has been widely praised by the international human rights community, with, for example, a previous UN Special Rapporteur on Torture welcoming it as a milestone in the fight against torture, and as a model that could be followed by countries in other regions.¹⁵¹
15. Similarly, the Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe has recognised it to be the “*gold standard*” and the “*state of the art*” of State regulation in this area.¹⁵² The Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe noted, however, that the nature and level of implementation by certain EU member States should be improved.¹⁵³
16. Furthermore, certain human rights NGOs have called on the EU member States and the Commission to amend and expand the Annexes of goods controlled and prohibited under the Regulation.¹⁵⁴
17. The current comprehensive review of the Regulation now being undertaken by the Commission and its submission of a “*comprehensive implementation and impact assessment report*” will provide an important opportunity for these issues to be addressed by the European Commission, European Parliament, and EU member States.

¹⁵¹ As quoted in European Council General Secretariat, Implementation of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment – stock taking and new implementation measures, 8407/1/08 REV 1 18 April 2008.

¹⁵² Legal Affairs and Human Rights Committee of the Parliamentary Assembly of the Council of Europe Study, paragraphs 34 and 38.

¹⁵³ Ibid.

¹⁵⁴ Grasping the nettle: Ending Europe’s Trade in Execution and Torture Technology, Index: EUR 01/1632/2015 Amnesty International/Omega Research Foundation, May 2015.

Appendix IV

(for information)

**Questionnaire sent out by the CDDH
to participants in its meetings****Question 1**

Has your country introduced national legislation (or alternative measures) which prohibits the trade in goods that are designed for torture and other ill treatment or for the application of the death penalty; and regulates the trade in goods that have a legitimate law enforcement purpose but which may be readily abused for torture and ill-treatment?¹⁵⁵

Does the relevant legal framework (or alternative measures) also cover brokering and promotion of regulated goods, transit of such goods across national territory and provision of training in their use? Is the legal framework (or alternative measures) based on existing international (including EU) standards, whether binding or non-binding?

Question 2

[Question for non-EU member States] How are prohibited and regulated goods defined and categorised under national legislation (or alternative measures)? Is there a mechanism for updating these definitions? How often are they updated, and when was this last done? Is there any Governmental reporting of exports of regulated goods and related training? Are these reports publicly available?

If so please provide copies form the last three years.

Question 3

Have there been in your country any investigations, prosecutions and/ or convictions for breaches of domestic regulations on the trade in such goods? If so, please provide details.

Question 4

Are there in your country any manufacturers or suppliers of:

- Goods that are designed for the execution of human beings (such as hanging ropes and gallows; gas chambers; electric chairs); or components of such goods;
- Goods that are promoted for use by law enforcement authorities, but which are either inherently inhumane or have no practical law enforcement use which cannot be achieved with less harmful means, including:
 - Weighted leg irons, fetters, finger cuffs, thumb cuffs; restraints fixed to walls or other objects; multi-point restraints such as shackle beds, restraint chairs and cage beds
 - Body worn electric shock devices such as electric shock belts
 - Direct contact electric shock devices such as stun batons, stun guns or stun shields
 - Spiked batons or spiked shields

If so, please provide details.

¹⁵⁵ I.e. goods and services that may fall within the descriptions set out in questions 4, 5, 6 and 7.

Question 5

Are there in your country any manufacturers or suppliers of law enforcement equipment that if used responsibly could have legitimate law enforcement purposes but which can be misused for torture and other ill-treatment, including:

- Riot control agents and associated delivery mechanisms
- Hand-cuffs and leg-cuffs and associated restraints
- Batons, truncheons, rubber bullets and plastic bullets
- Electric shock projectile devices such as Taser.

If so, please provide details.

Question 6

Are there in your country any manufacturers of dual use pharmaceutical chemicals that have legitimate medical uses, but which have been misused for lethal injection executions, such as sodium thiopental or pentobarbital?

If so, please provide details.

Question 7

Are there in your country any companies engaged in training other countries' military, security or police personnel in techniques that may be readily used for purposes amounting to ill-treatment and torture?

If so, please provide details.