



04 January 2022

***Declaration by FIACAT on common international standards on a torture/CIDTP and death penalty free trade of goods regarding Stakeholders’ Consultations -17 January 2022-
“Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards” launched by the Group of Governmental experts, established under General Assembly resolution 73/304***

Ad (i)

1. FIACAT believes that the mere adoption of Resolution 73/304 by the UNGA on 28 June 2019 demonstrates the feasibility for the Human Rights Council to negotiate on a non-discriminatory, transparent and multilateral basis an international instrument on a torture/CIDTP and capital punishment free trade of goods. In this context, the question of the death penalty should be addressed on an equal footing with torture or other cruel, inhuman or degrading treatment or punishment.

Such undertaking would help closing a major gap in human rights based trade controls in line with the UN Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011. Such common international standards will be a perfect way to concretize the regional and sub-regional efforts in this area already undertaken within the European Union and the African Union.

In this context, FIACAT strikes the importance of ensuring coherence and thus credibility between on the one hand a torture/CIDTP and death penalty free trade instrument at the international level and on the other hand the existing efforts at sub-regional and regional levels in this matter, such as the :

- EU Regulation 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment;
- Council of Europe Recommendation CM/Rec(2021)2 on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment;
- OSCE Ministerial Council Decision 720 (with a paragraph 21 recommending States a torture/CIDTP free trade of goods);
- African Commission on Human and Peoples' Rights (ACHPR/Res.472 (LXVII) 2020) resolution on the prohibition of the use, production, export and trade of tools used for torture.

Ad (ii)

2. This instrument should establish common international standards against the import, export and transfer of goods that can only be used or that could be used for practicing torture or other cruel, inhuman or degrading treatment or punishment or for executing capital punishment.

FIACAT believes that - among such goods (see : <https://omegaresearchfoundation.org/resources/identification-tools>) on the commercial field at the national, sub-regional, regional or international level - it is at any rate necessary to include electronic espionage tools that allow state authorities or non-state actors violating fundamental human rights to extract information, communications or other data from political opponents, civil society activists, human rights defenders, as well as from any other person defending its human

rights. Among such electronic espionage tools we mean hardware ones, such as IMSI catchers, micro-recorders, remote recording SIM cards or software ones, such as Pegasus.

Ad (iii)

3. The UN group of ten governmental experts is currently preparing a pre-project identifying the main parameters of such undertaking, such as its objective, object, scope, guiding principles, core elements, type of goods, etc. on the matter. The UN Human Rights Council should task later on an open-ended Working Group of States representatives with the participation of civil society NGOs on human rights to draft - on the basis of the above mentioned pre-project - common international standards on the matter, foremost a legally binding international instrument on the matter.

According to FIACAT, there are two major options to establish an international human rights instrument on the matter:

- a standing alone human rights global treaty, such as a convention on a torture /CIDTP and death penalty free trade of goods,

or

- a 3. Optional Protocol to the ICCPR on a torture /CIDTP and death penalty free trade of goods.

There is indeed a substantial link with article 7 ICCPR on the prohibition of torture/CIDTP and with article 6 ICCPR on the right to life and the death penalty issue as well as with the 2. OP to the ICCPR on the abolition of the death penalty.

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