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

General Assembly

Seventy sixth session

Agenda item 74 (b)

**Report of the Group of Governmental experts**

**Separate (Partially Dissenting) Opinion of Mr. Bakhtiyar Tuzmukhamedov**

1. For reasons set out below, I respectfully disagree with the approach taken by the Majority in formulating paragraph 51 and identical paragraphs 136 and 143 of the Report.

2. In paragraph 51 of the Report reference is made to a discussion within the present Group of Governmental Experts of a proposal to bring together concerned states and business entities to pursue the objective of torture-free trade. Yet, the Majority was of the opinion that “it would not be in line with the mandate of this Group to recommend to the General Assembly to establish a process outside the framework of the United Nations”.

I fail to find anything in the UN General Assembly Resolution 73/304 that might be construed as precluding the Group from proposing an “Option c”, along with “Option a: Legally binding instrument” (paragraphs 132-136) and “Option b: Non-Binding Standards” (paragraphs 137-143). I discussed this other option in an “Outline of Proposal of the GGE with Respect to the Non-Proliferation of Tools of Torture”. The Outline suggested a platform that could draw from experience of existing arrangements, aimed at regulation or prevention of proliferation of certain items, and serve as a venue for development of an international arrangement which, though not being a legally binding international treaty, would provide a blueprint both for governments and business entities to effectively prevent the proliferation of tools of torture by public or private sectors, whether as recipients or providers (donors). The Outline was circulated within the Group on 7 December 2021 and is enclosed herewith (see enclosure below).

3. In identical paragraphs 136 and 143 of the Report reference is made to a prospective “expert Working Group” that could be established by the General Assembly to further develop options for devising common international standards. The Majority continuously rejected the suggestion that the expert Working Group so proposed should be of open-ended composition.

I am of the opinion that bodies established under the UN auspices and tasked with development of new international standards, ought to be open-ended to allow broader and balanced participation, as well as to bypass the hurdles of election processes. Establishment of open-ended groups is a customary practice within the UN, including its human rights system (e.g. Open-ended Working Group on transnational corporations and other business enterprises with respect to human rights; Open-ended Working Group on regulatory framework of activities of private military and security companies; Open-ended Working Group on ageing; Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child; Open-ended Working Group on a draft United Nations declaration on the right to peace, *etc*.). With all due respect to membership of the present Group of Governmental Experts, while it, on its face, reflected the composition of the UN regional groups with experts chosen on the basis of equitable geographical distribution, in reality it comprised the plurality of four out of ten members hailing from states belonging to a regional arrangement (the European Union) that has been a major protagonist of a particular approach to the issue of torture-free trade.

*Enclosure*

OUTLINE OF PROPOSAL OF THE GROUP OF GOVERNMENTAL EXPERTS

WITH RESPECT TO THE NON-PROLIFERATION OF TOOLS OF TORTURE

(draft submitted to the GGE by its member Mr. Bakhtiyar Tuzmukhamedov
on 7 December, 2021)

The GGE shall propose a platform, based on achievements of the EU and The Alliance for Torture-Free Trade initiative, bringing together concerned states and business entities, which will develop best practices for the prevention of proliferation of items which have no other use than infliction of severe pain or suffering on human persons, in contravention of Art. 1 (1) and other relevant provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

To avoid visible conflation with trade, the prospective platform may be named The Alliance for Non-Proliferation of Tools of Torture (ANPTT). To further avoid its linkage solely to the EU, it may emanate from the EU as an organization, jointly with protagonists other than members of the EU, *e.g.* Argentina and/or Mongolia.

Drawing from experience of existing arrangements, aimed at regulation or prevention of proliferation of dual-use (civilian *v*. military) items (the Wassenaar Arrangement, the Missile Technology Control Regime *et al*.), as well as on the Montreaux Document on Private Military and Security Companies, the ANPTT shall serve as a venue for development of an international arrangement (*e. g.* The Buenos Aires/Ulaanbaatar Document on Non-Proliferation of Tools of Torture) which, not being a legally binding international treaty, shall provide a blueprint both for governments and business entities to effectively prevent the proliferation of tools of torture by public or private sectors, whether as recipients or providers (donors). The arrangement shall also accumulate the best practices in the field of non-proliferation of tools of torture. The blueprint shall offer guidelines for states to be consulted with and taken into account while devising national arrangements, including transparent regulations, licensing, and measures to improve supervision and liability.

The ANPTT shall also serve as a venue for informal consultations and exchanges between the participants of the Document (the ANPTT Forum). The Forum’s objective shall be to promote the Document at the national level and to encourage other States and international organizations to support and join it.

To minimize expenses related to functioning of the ANPTT Forum, its secretariat may operate as a compact cell within a relevant division of a foreign ministry in the capital of one of the protagonists or at its UN mission (New York or Geneva).