



General Assembly Third Committee
Topic 1: Abolishing the Death Penalty¹

25 September, 2017

Capital punishment, or the death penalty, is punishment by death for a crime. According to the human rights group Amnesty International, as of 2017, more than half of countries worldwide have abolished capital punishment completely. These states, known as “abolitionist,” now number 104. There are 141 countries, two-thirds of the world’s countries, that have abolished capital punishment in “law or practice.” Over the past twenty years, an average of two states per year have abolished the death penalty. The most recent states to do so were Benin and Nauru, which abolished capital punishment in 2016.²

States that retain the death penalty are known as “retentionist.” According to Amnesty International, 57 countries continue to use capital punishment.³ Of those, 23 are known to have carried out executions in 2016. That year, 87 percent of all 1,032 reported executions took place in four countries: Iraq, Iran, Saudi Arabia, and China. The US was not among the most prevalent users of capital punishment for the first time since 2006. The only remaining European country with capital punishment is Belarus, while Russia is abolitionist for ordinary crimes.⁴

According to human rights activists, the death penalty violates the right to life of all persons proclaimed in the Universal Declaration of Human Rights and other human rights treaties. Over time, this view has gained support. Since 2007, the UN General Assembly (GA) resolved to establish a worldwide moratorium (suspension) of the death penalty six times. It most recently sought to establish a moratorium in resolution A/RES/71/187, which it passed in December 2016.⁵ Yet, according to many observers, a moratorium is insufficient; what is needed is total abolition (elimination) of the death penalty worldwide.

One of the primary disagreements between abolitionist and retentionist states focuses on national sovereignty. Some states that oppose the moratorium and abolitionist movements do so not because of continued use of capital punishment, but because they believe it to be a country’s right to choose. Another debate focuses on whether the benefit to society of eliminating a criminal is worth the cost of taking a human life. Is and should there be a globally recognized “right to life” for all persons, including criminals?

History and Current Events

The ability of a state to impose the death penalty goes back to the sovereign rights of kings. According to John Locke, political power itself is “the right of making laws with the penalties of death.”⁶ In the 18th Century,

¹ This document was written by Samantha Stephens, Nicholas Potratz, and Karen Ruth Adams with contributions from Jessica Lawson. Copyright 2017 by Karen Ruth Adams.

² Amnesty International, “The Death Penalty in 2016: Facts and Figures,” 11 April 2017, <https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/>.

³ Amnesty International, “Death Penalty: The Issue in Detail,” <https://www.amnesty.org/en/what-we-do/death-penalty/>, accessed 23 September 2017.

⁴ Amnesty International, “Death Penalty: The Issue in Detail.”

⁵ UN General Assembly Resolution A/RES/71/187, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/187.

⁶ Austin Sarat, *Capital Punishment, Vol. I*, The International Library of Essays in Law and Society (Hants: Ashgate Publishing, Ltd., 2005), p. xiii.

England had 223 capital crimes.⁷ In the United States, death was a standard punishment for even non-violent crimes such as burglary, robbery, counterfeiting, theft, fraud, blasphemy, idolatry, sodomy, bestiality, and even altering inspected tobacco. Executions were performed in public squares during crowded times of the day. The brutal and public nature of these executions allowed the people to see and understand the power of the state.⁸

As brutal and primitive as these public executions might seem, prior to the 18th century few alternatives existed. Cities and towns before this time had jails to hold criminal prior to execution. Prisons in which criminals serve time and are reformed so they can rejoin society did not develop until much later. According to historian Stuart Banner, “The death penalty circa 1700 was the equivalent of prison today—the standard punishment for a wide range of serious crimes.”⁹

Since 1700, the death penalty has become less prevalent, and imprisonment and fines have become more common. There are many explanations for this change, including religion, politics, and international treaty law. There are also many sides to the debate about whether the death penalty can and should be abolished.

The Role of Religion

Religion plays a major role in how states view the death penalty. However, each of the major world religions has some ambiguity about whether capital punishment is encouraged or forbidden.

The Jewish Torah enumerates 36 capital crimes and says “thine eye shall not pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.”¹⁰ These scriptures, which also form the Christian Old Testament, further state that “the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.”¹¹ In practice, however, the death penalty was rarely administered, even in ancient Jewish communities. In 1954, Israel abolished capital punishment except for Nazi war crimes.¹²

The Hindu *Laws of Manu* (written about 500 BC) placed the king in charge of the criminal justice system, allowing him to impose the penalty of death for certain crimes. However, Hinduism has never been fully integrated into the political system of the Indian state.¹³ In addition, the Hindu concept of Karma (the idea that wrongdoers will be punished in the next life by returning in an undesirable form) has diminished the motivation to punish wrongdoers in this life.

The central concept of Buddhism, as first espoused by Siddhārtha Gautama in about 500 BC, is no intentional killing of any sentient being. Buddhist precepts are, however, simply guidelines for an ethical life and good Karma, not mandates from God to be enforced by humans in this lifetime. Thus, like Hinduism, Buddhism offers no clear policy direction.¹⁴ Bhutan, a predominantly Buddhist country, for example, is fully abolitionist.¹⁵ In

⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1977), p. 76.

⁸ Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press, 2002), p. 11.

⁹ Banner, *The Death Penalty*, p. 23.

¹⁰ Devarim-Deuteronomy 19:21, available at <http://www.jewishvirtuallibrary.org/jsource/Bible/Deuter19.html>

¹¹ Banner, *The Death Penalty*, p. 14.

¹² BBC, “Judaism and Capital Punishment,” <http://www.bbc.co.uk/religion/religions/judaism/jewishethics/capital.shtml>

¹³ David F. Greenberg and Valerie West, “Siting the Death Penalty Internationally,” *Law and Social Inquiry* 33:2 (Spring 2008); p. 309.

¹⁴ Greenberg and West, “Siting the Death Penalty Internationally,” p. 309.

¹⁵ Amnesty International, “Death Penalty: The Issue in Detail,” <https://www.amnesty.org/en/what-we-do/death-penalty/>, accessed 23 September 2017.

contrast, in Sri Lanka—majority Buddhist—the military has been accused of engaging in extrajudicial killings of members of the rebel group the Tamil Tigers, as well as “humanitarian workers, journalists, and ordinary citizens.”¹⁶

In the Christian New Testament, Jesus says “Do not repay evil with evil or insult with insult, but with blessing.”¹⁷ Other Christian scriptures are either silent on the issue or call for violence against sinners.¹⁸ After Christianity became the official religion of Rome, the death penalty became the accepted way to safeguard the sanctity of life “by executing murderers who had not respected it.”¹⁹

Because Islam provides a system of government and law within its religious precepts, Islamic teachings have had a very strong influence on state policy. Islamic law calls for a mandatory penalty of death for certain offenses such as adultery and heresy. In addition, the Koran expresses the principle of “a life for a life.” As a result, many Muslims argue that Islamic states should not abolish the death penalty.²⁰ Yet some Islamic states have become leaders in the abolitionist movement. For example, in Turkmenistan, 89 percent of the population is Muslim. In the mid-1990s, more than 100 people were executed each year, one of the highest execution rates per capita in the world. However, in 1999 the president issued a decree abolishing all capital punishment. A similar shift occurred in Kyrgyzstan, where the death penalty was abolished in 2007.²¹

The Role of Politics

Since the early 1800s, religious beliefs and philosophical attitudes have motivated many reformers to press for national legislation abolishing the death penalty. But, according to French historian and philosopher Michel Foucault, states such as France began to restrict their use of the death penalty not because of humanitarian concern for individuals, but because leaders realized that judges had to become less arbitrary or citizens would cease to obey them. In addition, public executions sparked sympathy for criminals and provided an opportunity for revolt.²² According to Foucault,

The reform of criminal law must be read as a strategy for the rearrangement of the power to punish, according to modalities that render it more regular, more effective, more constant, and more detailed in its effects; in short, which increase its effects while diminishing its economic cost ... and political cost.²³

Still, it is important to remember that states must have both the motivation and the means to establish less arbitrary and excessive punishments. Since the Industrial Revolution (about 1750), many states have had both the tax revenue and the public support needed to establish police forces, educate lawyers and judges, and staff and supply prisons. Where states are weak or absent, however, execution remains the punishment of choice. For

¹⁶ Ralph Ellis, “U.N. Calls for War Crimes Court in Sri Lanka,” *CNN*, 16 September 2015, <http://www.cnn.com/2015/09/16/world/sri-lanka-war-crimes/index.html>.

¹⁷ 1 Peter 3:9, New International Version, 1984, available at http://bible.cc/1_peter/3-9.htm

¹⁸ Greenberg and West, “Siting the Death Penalty Internationally,” p. 304.

¹⁹ Ernest van den Haag, “The Death Penalty is Just,” *The Death Penalty: Opposing Viewpoints*, (San Diego: Greenhaven Press, 2002), p. 75.

²⁰ Greenberg and West, “Siting the Death Penalty Internationally,” p. 309.

²¹ Roger Hood and Carolyn Hoyle, “Abolishing the Death Penalty Worldwide: The Impact of a ‘New Dynamic,’” *Crime and Justice*; 38:1; (The University of Chicago Press, 2009).

²² Foucault, *Discipline and Punish*, p. 78.

²³ Foucault, *Discipline and Punish*, pp. 80-81.

example, in Somalia, where the entire legal system collapsed with the government in 1991, crimes either go unpunished or are dealt with on an *ad hoc* basis by individuals, families, or religious groups.²⁴

The Development of International Treaty Law

The Universal Declaration of Human Rights (UDHR), unanimously adopted by the General Assembly of the United Nations on December 10, 1948, affirms that “[e]veryone has the right to life, liberty and security of person.”²⁵ UDHR is a non-binding agreement and does not explicitly mention capital punishment. But it has influenced the drafting and ratification of four subsequent binding agreements that denounce the death penalty.²⁶

Of these, the first and most important is the International Covenant on Civil and Political Rights (ICCPR). The ICCPR was adopted by the GA in 1966. According to Article 6:

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

In addition, state parties to the ICCPR agree that persons sentenced to death have a right to be pardoned and that the death penalty shall not be carried out on pregnant women or persons under 18 years of age.²⁷ As of September 2017, 169 of 193 UN Member States have ratified this treaty.²⁸

As of September 2017, 85 of the state parties to the ICCPR have gone further, adopting The Second Optional Protocol to the ICCPR, which opened for signature in 1989.²⁹ States that ratify this treaty pledge that no one within their territory will be executed, that they will take “all necessary measures to abolish the death penalty” within their territory, and that they will report to the UN Human Rights Committee (now called the Human Rights Council) on the measures they have taken to implement the treaty.³⁰ In addition, they have taken the unusual step of agreeing that only one kind of “reservation” to the treaty (a national statement limiting its applicability) can be expressed and, furthermore, that this can be done only at one time. Specifically, according to Article 2, state parties agree that:

No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.³¹

²⁴ Amnesty International, “In the Line of Fire: Somalia’s Children Under Attack,” July 2011, available at <https://www.amnesty.org/en/documents/afr52/001/2011/en/>.

²⁵ “Universal Declaration of Human Rights,” (1948), available at <http://www.un.org/en/documents/udhr/>.

²⁶ Sangmin Bae, *When the State No Longer Kills: International Human Rights Norms and the Abolition of Capital Punishment*, (Albany, NY: State University of New York Press, 2007), p. 2.

²⁷ “International Covenant on Civil and Political Rights,” (1966), Article 6, chapters 2, 4, 5, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

²⁸ “Status of Treaties: International Covenant on Civil and Political Rights,” (1966) available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

²⁹ “Status of Treaties: Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty,” (1989) available at http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en.

³⁰ “Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty,” (1989), Articles 1, 3, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>.

³¹ “Second Optional Protocol to the International Covenant on Civil and Political Rights,” Article 2.

The other worldwide agreement related to the death penalty is Article 68 of the fourth Geneva Convention, which outlaws capital punishment for citizens of an occupied territory during conflict if their government abolished the death penalty prior to the conflict.³² Most UN members have ratified the Geneva Conventions.

According to many observers, it is just a matter of time until this body of international treaty law persuades the other 107 UN member states (including Security Council members US, China, and Russia, as well as India, Iran, Japan, Nigeria, and Saudi Arabia) to adopt the Second Optional Protocol to the ICCPR and abolish the death penalty once and for all. Yet other observers note that many serious legal, philosophical, and political questions about the death penalty remain.

The Purpose of Punishment

According to legal scholars, punishment serves four primary purposes. First, punishment can make it physically impossible for a criminal to commit a crime again. Second, it can deter future crimes both by that individual and society at large. Third, punishment can be used to rehabilitate a criminal so he or she does not want to commit crime in the future. Finally, punishment can achieve retribution, or revenge.³³ All but the third of these purposes can be achieved through the use of capital punishment.

Some of the debate between abolitionists and retentionists revolves around the question of whether the death penalty or life imprisonment is a greater deterrent. In the 1970s, Isaac Ehrlich estimated that each execution between 1933 and 1969 in the US prevented 8 homicides. This study was used by a number of government officials to argue for the continued use of the death penalty when the issue went before the Supreme Court. Yet other studies show that the death penalty does no more than life imprisonment to decrease violent crime.³⁴

Historian Stuart Banner argues that the death penalty had a more marked effect when executions were public and brutal instead of performed behind closed doors to cause minimum discomfort and humiliation to the prisoner.³⁵ Yet even in the 1700s, Italian criminologist Cesare Beccaria argued that the “momentary spectacle” of an execution did not have the same, strong effect on the minds of potential wrongdoers as the fear of life imprisonment and loss of all liberty. According to him, “A punishment, to be just, should have only that degree of severity which is sufficient to deter others.” For Beccaria, the “perpetual slavery” of life imprisonment fulfills this goal just as much as death.³⁶

Given the minimal or at least debatable difference in the deterrent effects of the death penalty and life imprisonment, critics of the death penalty often focus on other factors, including cost. In 2002, a single execution in the United States cost more than \$2 million. By contrast, it cost \$800,000 to imprison someone for life.³⁷

³² Convention (IV) relative to the Protection of Civilian Persons in Time of War, Article 68(2), 12 August 1949, available at <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>.

³³ Lynn S. Branham, *The Law and Policy of Sentencing and Corrections* 7th ed., West: In a Nutshell Series (Minneapolis: Thompson West, 2005), pp. 2-6.

³⁴ Micheal L. Radelet and Ronald L. Akers, “Deterrence and the Death Penalty: The Views of the Experts” *The Journal of Criminal Law and Criminology* 87:1 (Autumn 1996), p. 10.

³⁵ Banner, *The Death Penalty*, p. 3.

³⁶ Cesare Beccaria, “The Death Penalty Will Not Discourage Crime (1764),” *The Death Penalty: Opposing Viewpoints* (San Diego: Greenhaven Press, 2002), p. 24.

³⁷ Christine Notis, “The Death Penalty Does Not Deter Crime,” *The Death Penalty: Opposing Viewpoints* (San Diego: Greenhaven Press, 2002), p. 122.

Nevertheless, a number of countries retain use of the death penalty to deter crime. For example, in 2001, China implemented a “strike hard” campaign in which 68 crimes were made capital offenses. Since then, criticism of this policy has been widespread. Professor Zhao from Beijing Normal University described it as not having reduced crime but as having reduced “the standards of the death penalty.”³⁸ Since then, China has replaced its “strike hard” policies with an approach called “Balancing Leniency and Severity.” Under this policy, China has used capital punishment only for “extremely serious crimes.”³⁹

From 2002-2006, only 15 countries carried out executions for a crime other than murder. Of the 31 countries that recognized trading in illicit drugs as a capital offense during this period, only 8 executed anyone for that offense.⁴⁰

A Right to Life?

Since freedom from crime is as much a human right as the right to life, debates about the death penalty often become philosophical arguments about whose rights matter more: victims or criminals.

From the perspective of Amnesty International, capital punishment is wrong in all instances: “it is the ultimate cruel, inhuman or degrading punishment and violates the right to life.”⁴¹ Similarly, in 2009, at the 20th anniversary of the Second Optional Protocol to the ICCPR, Navi Pillay, the UN High Commissioner for Human Rights called for universal abolition. According to her,

I am opposed to the death penalty in all cases... I hold this position for a number of reasons: these include the fundamental nature of the right to life; the unacceptable risk of executing innocent people by mistake; the absence of proof that the death penalty serves as a deterrent; and what is, to my mind, the inappropriately vengeful character of the sentence.⁴²

One of the leading arguments against capital punishment is that even the smallest chance that an innocent person could be killed is an “unacceptable breach of the right to life.”⁴³ In the United States, a number of studies have found that race plays an overwhelming role in juries’ decisions to apply the death penalty. For example,

A 2007 study of death sentences in Connecticut conducted by Yale University School of Law revealed that African-American defendants receive the death penalty at three times the rate of white defendants in cases where the victims are white. In addition, killers of white victims are treated more severely than people who kill minorities, when it comes to deciding what charges to bring.⁴⁴

Sangmin Bae, a scholar who argues that capital punishment should be universally abolished, argues that the movement to abolish the death penalty shows that the focus is shifting “from the state’s right to kill to a citizen’s right not to be executed by the state.”⁴⁵

³⁸ Hood and Hoyle, “Abolishing the Death Penalty Worldwide,” p. 46.

³⁹ Jang Su “From ‘Harsh Justice’ to ‘Balancing Leniency with Severity,’” *Peking University Law Journal* 5, no. 1 (30 May 2017).

⁴⁰ Hood and Hoyle, “Abolishing the Death Penalty Worldwide.”

⁴¹ Amnesty International, “Amnesty International Fair Trials Manual,” available at <https://www.amnesty.org/download/Documents/156000/pol300021998en.pdf>, accessed 23 September 2017.

⁴² UN News Service, “UN Human Rights Chief Calls for Universal Abolition of the Death Penalty,” *UN Daily News*, 15 December 2009, p. 7, available at <http://www.un.org/news/dh/pdf/english/2009/15122009.pdf>.

⁴³ Hood and Hoyle, “Abolishing the Death Penalty Worldwide.”

⁴⁴ Amnesty International, “Death Penalty and Race,” <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-and-race>

⁴⁵ Sangmin Bae, *When the State No Longer Kills*, p. 2.

Public Opinion and the Death Penalty

The concept of a right to life raises the thorny political question of how abolitionists should work to ensure that the rights of all citizens, including criminals, are upheld. There are three options. First, states can regulate themselves. Second, citizens can hold their states accountable. Third, other states can intervene to change a country's laws or stop a particular execution.

In democratic countries, citizens play a vital role in this process, and public policy generally reflects public opinion. In Western European democracies, where the death penalty has been abolished, public opinion tends to oppose capital punishment. In the US, where the death penalty continues except for children under the age of 18, the "death penalty has generally enjoyed widespread public support."⁴⁶ Still, that support has waned over the years. In 2016, public support for capital punishment fell below 50 percent in favor. In addition, there were only 20 executions completed that year, the lowest number in 25 years, and 30 death sentences imposed.⁴⁷

Non-democratic states have generally been slower to abolish the death penalty and frequently use the death penalty to repress political dissent. In 2016, Iran accounted for nearly 55% of global executions. All of the other countries that used capital punishment most frequently in 2016 were also non-democratic.⁴⁸

States at varying levels of economic development have abolished the death penalty. For example, Mexico is still developing, but it does not practice capital punishment. Conversely, Japan and the US are highly developed yet both continue to implement the death penalty.⁴⁹

The European Union (EU) opposes the death penalty in all circumstances. In addition to abolishing the death penalty by all Member States, the EU is committed to "work toward the universal abolition of the death penalty...[and] where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards."⁵⁰ Other regional groups have started to follow this example. In 1998, the Asian Human Rights Charter adopted a "right to life" article. In 1999, the African Commission on Human and People's Rights urged African states to work towards a continental moratorium.⁵¹

A number of national constitutions have been amended to include provisions explicitly outlawing death sentences. Some abolitionist provisions are as simple as Romania's, which states, "The death penalty is prohibited." Belgium's is phrased so the issue cannot be reintroduced: "Civil death is abolished; it cannot be brought back into force."⁵² According to South Africa's constitution, "Everyone has the right to life."⁵³

⁴⁶ Sangmin Bae, *When the State No Longer Kills*, p. 99.

⁴⁷ The Editorial Board, "The Continuing Collapse of the Death Penalty," *New York Times*, 26 December 2016, <https://www.nytimes.com/2016/12/26/opinion/the-continuing-collapse-of-the-death-penalty.html?mcubz=1&mtref=www.google.com&assetType=opinion>.

⁴⁸ Amnesty International, "Death Sentences and Executions in 2016," April 2017, available at <https://www.amnesty.org/en/what-we-do/death-penalty/>.

⁴⁹ Hood and Hoyle, "Abolishing the Death Penalty Worldwide," p. 47.

⁵⁰ Council of the European Union, "Death Penalty," available at <http://www.consilium.europa.eu/showPage.aspx?id=1702&lang=EN>.

⁵¹ Hood and Hoyle, "Abolishing the Death Penalty Worldwide."

⁵² Romania: Chapter of Deputies, "Constitution of Romania," Article 22(3), available at http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2 - t2c2s0a22; Belgium, "The Constitution," Article 18, available at <http://www.wipo.int/wipolex/en/details.jsp?id=11637>.

⁵³ Republic of South Africa, "Constitution of the Republic of South Africa, 1996," Article 11, available at <http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>.

Once capital punishment has been abolished, countries rarely resume executions. Just four of the nations that have abolished capital punishment since 1961 have reintroduced the practice: Nepal (1985), Philippines (1987), Gambia (1991), and Papua New Guinea (1995). Nepal and the Philippines later re-abolished the death penalty due to domestic pressure.⁵⁴ Gambia's new president has recently taken steps towards abolishing capital punishment.⁵⁵

In the last fifteen years, some European leaders have called for Europe to rethink its anti-death penalty stance. This can be partly attributed to the fact that few Eastern European countries held public debates before abolishing the death penalty to meet European Union membership standards. In 2006 Polish President Kaczynski argued that "Countries that give up this penalty award an unimaginable advantage to the criminal over his victim, the advantage of life over death."⁵⁶

International Intervention and National Sovereignty

Although death penalty sentences were handed down during the Nuremberg Trials of Nazi war criminals at the end of WWII, international criminal tribunals since then have largely prohibited their use. During the International Criminal Tribunal for Rwanda (ICTR), the UN Security Council refused to allow the government of Rwanda to execute those responsible for the 1994 genocide of 800,000 mostly ethnic Tutsi by ethnic Hutu. Capital punishment was also disallowed by the Security Council for the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone, the other two major ad hoc international criminal tribunals of the last century.⁵⁷

The first permanent international criminal tribunal, the International Criminal Court (ICC) disallows capital punishment for genocide, war crimes, and crimes against humanity. The Rome Statute, the founding document of the ICC, went into force in 2002. Article 77 outlines applicable penalties, including fines, imprisonment, and in especially grave cases, life imprisonment.⁵⁸

When the ICC abrogated the death penalty, many observers hoped that it was evidence of a new global consensus. But the 2006 execution of Saddam Hussein by the US-supported Iraqi government indicated that certain states still have the motivation and the means to continue capital punishment.⁵⁹ According to human rights activists, Hussein's execution by hanging for crimes against humanity was a violation of human rights norms in two respects: First, his trial took place outside of both the normal Iraqi judicial system and the established framework of international law.⁶⁰ Second, his execution was cruel and unusual. Hussein was mocked and taunted, the proceedings were filmed, and he was hung before he could finish his final prayer.⁶¹

⁵⁴ Hood and Hoyle, "Abolishing the Death Penalty Worldwide."

⁵⁵ Death Penalty Information Center, "What's New," <https://deathpenaltyinfo.org/>, accessed 23 September 2017.

⁵⁶ Craig S. Smith, "Hanging Hussein: In Europe, It's East vs. West on the Death Penalty," *The New York Times*, 19 November 2006, available at <http://www.nytimes.com/2006/11/19/weekinreview/19smith.html?ref=saddamhussein>.

⁵⁷ Jens David Ohlin, "Applying the Death Penalty to Crimes of Genocide," *The American Journal of International Law*, 2005; Vol. 99; p. 748.

⁵⁸ *Rome Statute of the International Criminal Court*, 2002, https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

⁵⁹ Ohlin, "Applying the Death Penalty to Crimes of Genocide," p. 749.

⁶⁰ Issam Michael Saliba, "Is the Death Penalty An Option In the Trial of Saddam Hussein?" Library of Congress, Law Library; 2007, available at <http://www.loc.gov/law/help/hussein/capital.php>.

⁶¹ Mike Nizza, "Hussein's Execution Was Botched, Judge Says," *New York Times*, 29 April 2008, available at <http://thelede.blogs.nytimes.com/2008/04/29/husseins-execution-was-botched-judge-says/>. See also Michael A. Newton and Michael P. Scharf, *Enemy of the State: The Trial and Execution of Saddam Hussein* (New York: St. Martins Press, 2008), p. 185.

In 2007, UN then Secretary-General Ban Ki-Moon was criticized for his decision not to condemn the application of the death penalty to Hussein. According to Ban, “The issue of capital punishment is for each and every member state to decide.”⁶² Many within the international community were surprised by this, as Ban took the national sovereignty side of the debate instead of the human rights approach usually taken by UN leaders. Since becoming Secretary-General, António Guterres has not spoken directly against the death penalty, though he has stated that he hopes to “turn back efforts to reinstate capital punishment” from states who have abolished it.⁶³

The Extradition Challenge

One of the challenges of the national sovereignty approach is deciding how to handle the problem of people who are charged with crimes in one country but are apprehended in another. Historically, this problem has been dealt addressed with bilateral (state-to-state) extradition treaties. For example, the US has treaties with many states of the world in which the US and the other state promise to exchange criminals so they can be tried. In bilateral relationships without such treaties, states that apprehend international criminals can extradite them to the state in which they are charged, release them, or prosecute them under domestic law.

In recent years, states that oppose the death penalty have begun to refuse to extradite criminals to countries that continue to use capital punishment. For example, in 2002, Denmark released a leading Chechen nationalist rather than extradite him to Russia to face the death penalty.⁶⁴ Additionally, Mexico refused to extradite 26 terror suspects to the US in 2002 because of the chance they might be executed.⁶⁵

In 1990, the General Assembly passed a Model Treaty on Extradition to provide states with a framework for drafting bilateral extradition treaties. The Model Treaty gives states the option to not extradite based the chance the other state might impose the death penalty or to require assurances that the death penalty will not be imposed.⁶⁶

The Shortage of Lethal Injections

In 2010, the European Union began restricting exportation of sodium thiopental to the US to protest continued use of the death penalty. Sodium thiopental is the first of the three drugs used in the lethal injection “cocktail.” Its role is to put the convicted person to sleep before the lethal drugs take effect. Sodium thiopental is also one of the leading general anesthesia drugs used worldwide. According to the World Health Organization, it is an “essential medicine” for any health care system.

Hospira is the only supplier of the drug in the US. It stopped production in 2009 due to an inability to obtain an active ingredient from another supplier. When Hospira decided to restart production at the end of 2010 in Italy, the Italian government required Hospira to guarantee that none of the sodium thiopental would be used in legal injections. Because Hospira was unwilling guarantee this, it abandoned its plans to restart production. Even though this shortage has had a substantial impact on the US, substitutes for sodium thiopental are becoming available.⁶⁷

⁶² Julia Preston, “New U.N. Chief Invites Controversy by Declining to Oppose Hussein Execution,” *The New York Times*, 3 January 2007, <http://www.nytimes.com/2007/01/03/world/middleeast/03nations.html?ref=saddamhussein>.

⁶³ António Guterres, “Remarks to the Human Rights Council,” UN Secretary-General website, 27 February 2017, <https://www.un.org/sg/en/content/sg/speeches/2017-02-27/secretary-generals-human-rights-council-remarks>.

⁶⁴ “Denmark frees top Chechen envoy,” *BBC News*, 3 December 2002, <http://news.bbc.co.uk/2/hi/europe/2539567.stm>.

⁶⁵ Chris Kraul, “Results of Mexican State’s Pro-Death Penalty Poll Clash with Law, Tradition,” *Los Angeles Times*, 19 February 2003, <http://articles.latimes.com/2003/feb/19/world/fg-mexico19>.

⁶⁶ United Nations General Assembly, Resolution 45/116: Model Treaty on Extradition, 14 December 1990, available at http://www.unodc.org/pdf/model_treaty_extradition.pdf.

⁶⁷ Charles Lane, “Europe’s dangerous death penalty gesture,” *The Washington Post*, 1 February 2011, http://voices.washingtonpost.com/postpartisan/2011/02/europes_dangerous_death_penalt.html

On 21 September 2011, two executions were carried out in the US using pentobarbital, a barbituate developed by Lundbeck, a Danish company, to euthanize animals. Since then, the president of the manufacturer has asked the governor of Florida not to use the drug in an upcoming execution. According to an anesthesia professor at Harvard medical school, using pentobarbital runs a "substantial risk of serious harm such that condemned inmates are significantly likely to face extreme, torturous and needless pain and suffering."⁶⁸ Drug manufacturers have increasingly disallowed the use of their drugs for executions, as they do not want their products associated with capital punishment. In 2016, another large pharmaceutical manufacturer, Pfizer, placed restrictions on its products to prevent their use in lethal injections. According to the New York Times, "more than 20 American and European drug companies have already adopted such restrictions, citing either moral or business reasons."⁶⁹

Previous Committee Work on This Topic

Although the topic of the death penalty extends across a number of UN bodies, the overarching discussion takes place within the General Assembly Third Committee, which discusses social, humanitarian, and cultural issues. In addition, the UN Economic and Social Council (ECOSOC) makes recommendations to the GA "for the purpose of promoting respect for and observance of, human rights."⁷⁰

The landmark GA Resolutions on this topic have been those opening the ICCPR (1966) and the Second Optional Protocol (1989) for signature and ratification by UN member states. In addition, a 1984 GA resolution outlined the rights guaranteed to those on death row and restricts the cases in which the death penalty may be applied to only those cases wherein a "serious crime" has occurred.⁷¹ Although what "serious crime" includes remains debatable, a number of retentionist states subsequently decreased the number of capital crimes they recognize. For example, North Korea decreased its capital offenses from 33 to 5 in 2001, and Viet Nam's declined from 44 to 29.⁷² Thus a 2005 ECOSOC report assessing the implementation of the 1984 resolution showed an "encouraging trend towards abolition and restriction of the use of capital punishment in most countries."⁷³

In 2007, the GA passed a resolution calling for a worldwide moratorium on executions, with 104 votes in favor, 54 against, and 29 abstentions.⁷⁴ Resolution 62/149 states that the death penalty "undermines human dignity...[and] that there is no conclusive evidence of the deterrent value of the death penalty."⁷⁵ The moratorium calls for the suspension of executions, which it notes is frequently followed by the abolition of capital punishment.

According to retentionist states, the moratorium represents an infringement on national sovereignty. Delegates from Singapore, Egypt, and China all gave speeches to the effect that if a global moratorium on capital

⁶⁸ Ed Pilkington, "Florida execution: drug firm protests to governor over lethal injection," *Guardian*, 27 September 2011, <http://www.guardian.co.uk/world/2011/sep/27/death-penalty-florida-pentobarbital-lethal-injection?newsfeed=true>.

⁶⁹ Erik Eckholm, "Pfizer Blocks the Use of Its Drugs in Executions," *New York Times*, 13 May 2016, <https://www.nytimes.com/2016/05/14/us/pfizer-execution-drugs-lethal-injection.html?mcubz=1>.

⁷⁰ "Charter of the United Nations," Chapter X, Article 62, available at <http://www.un.org/en/documents/charter/>.

⁷¹ ECOSOC Resolution, "Safeguards guaranteeing protection of the rights of those facing the death penalty," 25 May 1984, Annex II, https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1980-1989/1984/ECOSOC_Resolution_1984-50.pdf.

⁷² Hood and Hoyle, "Abolishing the Death Penalty Worldwide."

⁷³ United Nations Economic and Social Council, "Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty," 29 July 2005, p. 1.

⁷⁴ Amnesty International, "Moratorium on the Use of the Death Penalty," 18 December 2007, available at <http://www.amnesty.org/en/library/info/ACT50/020/2007/en..>

⁷⁵ United Nations General Assembly Resolution 62/149 (18 December 2007), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/149.

punishment were to be put into effect it would interfere with the ability of individual states to run their criminal justice systems as they see fit. Other nations that voted against the moratorium but were not retentionist did so not in support of capital punishment, but rather in support of national sovereignty and a state's right to choose. Resistance to the moratorium was most profound in Muslim states; 58 percent of those that voted against it were states with a majority Muslim population.⁷⁶

The 2007 resolution calling for a moratorium on executions was sponsored by the European Union. In 2008, the resolution was successfully repeated and was sponsored by "a wide, cross-regional alliance of countries."⁷⁷ In addition, the 2008 Resolution (63/168) requested "a report on progress made in the implementation of" the 2007 resolution.⁷⁸ In response, the Secretary-General issued two reports: one in May 2008 on trends in legal abolition of the death penalty⁷⁹ and one in August 2008 on the progress of the global moratorium on executions.⁸⁰

In December 2016, the GA passed its sixth moratorium on the use of the death penalty. This resolution was adopted by 117 in favour, to 40 against, with 31 abstentions. It called on states to "respect international standards that provided safeguards guaranteeing protection of the rights of those facing the death penalty, to comply with their obligations on consular relations, to progressively restrict death penalty use, to establish a moratorium on executions and to make available relevant disaggregated data." In response, Singapore critiqued the resolution by contending that it was the prerogative of Member States to decide for themselves whether they should use capital punishment.⁸¹

Conclusions

Countries that continue to use capital punishment face increasing pressure from the international community to suspend or limit its use. At the same time, countries that oppose the death penalty face the question of how far to press for change. Is it enough to slowly expand the pool of states agreeing to a moratorium, or is it time to seize the moment and press for worldwide abolition of the Second Optional Protocol of the ICCPR?

As you research your country's position on this issue, consider the following questions:

- What is your country's position on the death penalty? Has it ratified the ICCPR and Second Optional Protocol? Did it vote for or against the 2007, 2008, 2010, 2012, 2014, or 2016 moratoria? Does it have legal or constitutional provisions about the right to life or the role of capital punishment?
- What type of regime governs your country? Is it responsive or resistant to public opinion?
- Is the death penalty supported or opposed by your nation's citizenry?
- Does your country have a high rate of violent crime? Does it use the death penalty to deter murder and/or other crimes? If not, what types of punishment are used to deter criminals?
- Was your country involved in any of the ad hoc international criminal tribunals for Rwanda, the former Yugoslavia, or Sierra Leone? Is your country a member of the ICC? What was its position on the execution of Saddam Hussein?

⁷⁶ Hood and Hoyle, "Abolishing the Death Penalty Worldwide," p. 41.

⁷⁷ Council of the European Union, "Death Penalty."

⁷⁸ United Nations General Assembly Resolution 63/168 (18 December 2008), available at <http://www.consilium.europa.eu/uedocs/cmsUpload/N0848087.pdf>.

⁷⁹ United Nations Human Rights Council Report by the Secretary-General, "Question of the Death Penalty."

⁸⁰ United Nations General Assembly Report of the Secretary-General A/63/293, "Moratoriums on the Use of the Death Penalty," (15 August 2008), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/293.

⁸¹ UN General Assembly, "General Assembly Adopts 50 Third Committee Resolutions, as Diverging Views on Sexual Orientation, Gender Identity Animate Voting," Press release GA/11879, 19 December 2016, <https://www.un.org/press/en/2016/ga11879.doc.htm>.

- Does your country have bilateral extradition treaties with nations that practice capital punishment? Have controversial extraditions occurred?
- Is the death penalty a human rights issue? If so, what can and should the GA-3 do to ensure the promotion of human rights in this area?

Recommended Reading

Amnesty International. "Death Penalty: The Issue in Detail." <https://www.amnesty.org/en/what-we-do/death-penalty/>. Accessed 15 September 2017.

This website provides links to statistical information regarding the death penalty and the movement to abolish it. It includes information on both particular countries and worldwide trends. For quick stats and trends, as well as regional profiles, see the Amnesty International Facts and Figures page (<https://www.amnesty.org/en/latest/news/2017/04/death-penalty-2016-facts-and-figures/>).

Death Penalty Information Center. "Home." Available at <https://deathpenaltyinfo.org/>.

This website is a good place to begin your research. Although the data focus on the death penalty in the US, the discussion raises central questions about abolition and retention worldwide.

Human Rights Watch. "Death Penalty." Available at <https://www.hrw.org/tag/death-penalty>.

This website provides access to death penalty information compiled by Human Rights Watch, a non-governmental organization that monitors human rights abuses in particular countries. This is a good place to find out what is new in the death penalty debate and whether and how your country is involved.

United Nations General Assembly Report of the Secretary-General A/63/293. "Moratoriums on the Use of the Death Penalty." 15 August 2008. Available at <http://www.un.org/Docs/journal/asp/ws.asp?m=A/63/293>.

This report analyzes various perspectives regarding abolition and concludes that there is a global trend toward abolishing the death penalty and affirms the role played of moratoriums in catalyzing this change.

United Nations Office of the High Commissioner of Human Rights. "Fact Sheet No. 2: International Bill of Human Rights." *Office of the High Commissioner of Human Rights*. June 1996. Available at <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>, accessed 20 January 2010.

This fact sheet outlines the major human rights treaties, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. To learn whether your country has signed and ratified the ICCPR and/or the Second Optional Protocol to the ICCPR, consult the sources in footnotes 28 and 29.