

Committee: SOCHUM 2

Topic: The question of a moratorium on the use of the death penalty

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Summary

The death penalty has been a topic of discussion among philosophers, politicians and others for centuries. As well as political, economic and scientific factors, there are more complex social issues such as religion, ethics, history and culture at play, making the question of a moratorium on the use of the death penalty deeply controversial.

Around two-thirds of countries around the world are now abolitionist in law and/or in practice, a huge increase from just a few decades ago, when the vast majority of countries still carried out executions for civilians. In 2017, Mongolia abolished the death penalty for all crimes taking the number of countries to have fully abolished capital punishment to 106. Meanwhile, after Guatemala became abolitionist for ordinary crimes such as murder, the number of countries that have now abolished the death penalty in law and/or in practice stands at 142.

According to Amnesty International, executions were carried out in 23 countries in 2017, and the total number of executions dropped by 4% from 2016. 2591 death sentences were handed out in 53 countries, down 17% from 2016. Overall, 21,919 people are known to be on death row globally. These statistics, however, do not include thousands of the executions that are carried out in China each year, where information regarding capital punishment is kept a state secret.

The question of whether capital punishment should be used at all is of course at the centre of the debate concerning the death penalty. This should not, however, be the only question. One of the other key points of discussion is who should be liable for execution, in regard to the age and mental capacity of the condemned, and the crimes for which citizens can be executed.

Age – the UN defines a child as ‘a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier’ in the Convention on the Rights of the Child (ratified by 192 member states). In the majority of countries, then, anyone below the age of 18 is deemed to be a child, and the judicial system treats those individuals as such. There are, however, some countries which do not adhere to UN guidance. In Iran, for example, the age of full criminal responsibility is merely outlined as ‘the age of maturity,’ with boys as young as 14 years and 7 months, and girls as young as 8 years and 9 months being subject to adult penalties, including the death sentence. Amnesty International said that in 2015, at least 9 people were executed for crimes they committed when they were under the age of 18 – 5 in Pakistan and 4 in Iran. 80 more are currently on death row in Iran. Similarly, Teruhiko Seki was executed in Japan for a crime which he committed as a minor under Japanese law.

Mental capacity – in 2017, there were cases of people with diminished mental capacities being executed in Japan, the Maldives, Pakistan, Singapore and the USA, sparking outrage among human

rights campaigners. Numerous groups have voiced concerns over the execution of people who they deem to have significantly reduced understanding or control over their crimes, and many abolitionist states have encouraged retentionist states to make exceptions for those with intellectual disabilities. One historic notable case is that of Derek Bentley, a 17-year-old with developmental issues who was charged with being a party to murder, which served as a catalyst for the abolition of the death penalty in the UK in the 1960s.

Crimes punishable by death – many actions are almost universally criminal, and so the debate around their punishment is largely one of proportionality. International law sets out the ‘most serious crimes’ standards of ‘intentional killing,’ but people continue to be sentenced to death for crimes which do not meet this threshold. These offences typically include drug-related, economic, and non-violent crimes – 15 countries gave death sentences in 2017 for drug-related crimes, and 12 carried out executions. In Singapore, 8 people were hanged in 2017 for drug trafficking or possession, and 40% of all executions in Iran and Saudi Arabia were for drug-related offences. The most controversial crimes punishable by death though, are those which are deemed by some nations to warrant violent execution, and by others as not even criminal. The most notable of these are homosexual sodomy, adultery, blasphemy, political dissent and apostasy. This issue is much wider, and is not one to be tackled in a debate over form of punishment.

In addition to who should be liable, the method of execution is a major point of disagreement. Some believe that the most humane method possible should be used, whereas others feel that the method of punishment should ‘match’ the nature and severity of the crime. Human rights organisations take great issue with the latter view, and numerous abolitionist states have condemned methods such as stoning as brutal and out of place in the 21st century. The most important document in this argument is the Universal Declaration of Human Rights, in which Article 5 states that ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.’ Similar concerns have been raised over public executions, which still take place in Saudi Arabia, North Korea and Somalia – these nations, too, have been widely condemned. Alleged improper and inhumane treatment of the condemned prior to execution in certain countries has also been the subject of criticism by human rights groups – some argue the very nature of death row is inhumane, while others point to examples of torture and public humiliation (often used to deter others or as a means of attaining information) prior to execution. One recent case which caused outcry was that of four Japanese prisoners, who, in 2017, were executed with no warning given to the prisoners, their families or their legal representatives.

A further point of discussion surrounding the use of the death penalty is the judicial process. Universal standards of fair trial (mandating legal representation and the right to appeal, prohibiting torture and imprisonment without trial, and reaffirming the principle of ‘innocent until proven guilty’, etc.) should prevent malpractice in this regard. However, in 2017 human rights organisations recorded a number of cases where these standards were not met. Cases involving the extraction of confessions through torture or other ill-treatment are said to have occurred in Bahrain, China, Iran, Iraq and Saudi Arabia, with some confessions even being broadcast live on television (in Iran and Iraq).¹ Other examples of malpractice were also recorded all of these countries, the most prominent case occurring in Bahrain – Amnesty International reports that the trials of three men executed on 15th January 2017 for terrorism-related acts did not meet international regulations, as their lawyers did not have access to all the evidence against them, and

¹ These allegations have not been verified by any of the nations involved

were not allowed to cross-examine the prosecution witnesses. Amnesty also found that two of the men were found guilty following coerced confessions which were admitted as evidence.

Because of the enormous variations country-to-country on the topic of capital punishment, another important issue is criminals being sentenced to death in foreign countries – a British citizen being executed for homosexual sodomy in Afghanistan, for example, would raise serious problems. Questions around sovereignty are key on this issue.

Definition of Key Terms

Moratorium – there are slightly varying legal definitions, however the phrase ‘moratorium’ is generally accepted to mean a total but temporary suspension of an activity. In the case of the death penalty, it is often stated that nations should have a ‘view to abolition’ in addition to introducing a moratorium on its use

Abolitionist – refers to a nation which no longer uses the death penalty, and has legally abolished it

Abolitionist de facto – refers to a nation which no longer uses the death penalty, but has not legally abolished it. Any nation which has not issued a death penalty or carried out an execution within the last 10 years is seen to be ‘abolitionist de facto’

Retentionist – refers to a nation in which the death penalty is legal and has either issued a death penalty or carried out an execution within the last 10 years

Major Countries and Organisations Involved

Please see other document (‘country-by-country stance on the death penalty’) for each nation’s stance on capital punishment.

United Nations

Former Secretary General Ban Ki-moon said: ‘The right to life is the foundation of all human rights. The taking of life is irreversible, and goes against our fundamental belief in the dignity and worth of every human being. I call on all world leaders, legislators and justice officials to stop executions now. There is no place for the death penalty in the 21st century.’

Former Assistant Secretary General for Human Rights Ivan Šimonovi’c said: ‘Victim’s perspectives, taken holistically, make a compelling case against the death penalty. When it comes to the death penalty, almost everyone loses.’

The Universal Declaration of Human Rights, the Convention on the Rights of the Child, and numerous other conventions/resolutions support the ‘right to life’ and oppose the sort of punishment which the death penalty represents – see section on relevant treaties and events

Amnesty International

Amnesty International, like the UN and many human rights organisations, is strongly opposed to the use of the death penalty.

A statement on their website (2018) reads: 'At Amnesty International, we firmly believe that no one – including any government – has the right to take away someone else's life. We oppose the use of the death penalty in every single case. No matter what the crime, who the alleged criminal is, or the method proposed to execute them – we will always stand against it. We're working to end the use of the death penalty around the world, and won't stop until every country in the world has abolished it.'

Former Secretary General of Amnesty International Salil Shetty said: 'Strong leaders execute justice, not people. Despite strides towards abolishing this abhorrent punishment, there are still a few leaders who would resort to the death penalty as a quick-fix rather than tackling problems at their roots with humane, effective and evidence-based policies. The draconian anti-drug measures widely used in the Middle East and Asia-Pacific have totally failed to address the issue. The death penalty is a symptom of a culture of violence, not a solution to it.'

Former Secretary General of Amnesty International Salil Shetty said: 'It is high time that the rest of the world follows their [Sub-Saharan African nations]' lead and consigns this abhorrent punishment to the history books.' (2017)

China

China is the world's leading executioner. It is thought that China have executed more prisoners every year between 2010 and 2018 than all other nations combined – in 2011, it was estimated that they executed as many prisoners in 3 days as the USA, the world's 5th-ranked, did in a year. The exact numbers are a state secret, however Amnesty International report that 'thousands' of executions are carried out each year, and the Dui Hau Foundation, a US-based human rights non-profit organisation that focuses on China, report around 5000 executions annually. While China's human rights record is criticised regularly by fellow states and NGOs, not least in regard to its high rate of executions, it is important to take China's vast population of 1.38 billion into account. When viewed per capita, China's 1 execution per 260,000 (at time of 2014 report) is not as large in comparison to 1 per 300,000 in Iran and 1 per 460,000 in North Korea.

Botswana

Method of execution – the President is permitted to decide upon almost any method of punishment he/she wishes.

Italy

Italy have been very influential in trying to introduce a moratorium on the use of the death penalty worldwide at the United Nations, successfully passing a resolution in the General Assembly as part of the EU in 2007. Italian Foreign Minister Massimo D'Alema said at the time: 'We must start working on the abolition of the death penalty.'

Iran

Method of execution – stoning and falling from a height are both permitted for civilians.
Capital crimes – large number of non-violent crimes punishable by death.

New Zealand

New Zealand are avid supporters of a moratorium on the use of the death penalty – they played a key role in securing the support of 8 co-authors for the EU’s UN resolution on a moratorium on the use of the death penalty in 2007.

Nigeria

Method of execution – stoning and crucifixion are both permitted for civilians.

Capital crimes – large number of non-violent crimes punishable by death, including adultery, apostasy, homosexual sodomy, incestuous relations, witchcraft and the practicing of indigenous religions.

North Korea

Method of execution – not mandated by legislation but simply says ‘extinguishing bodily life.’ South Korean media reported that a senior party official was executed by flame thrower in 2014 and that a senior military official was executed with a mortar round in 2012.

Capital crimes – large number of non-violent crimes punishable by death, including circulating ‘harmful’ information, religious offences and being a ‘scoundrel.’

Saudi Arabia

Method of execution – stoning and beheading are the only methods permitted for civilians.

Capital crimes – large number of non-violent crimes punishable by death, including adultery, apostasy, homosexual sodomy, recidivist consumption of alcohol and sorcery/witchcraft.

Sudan

Method of execution – stoning is permitted for civilians; it also allows executions to be carried out ‘in the same manner in which the offender caused death’ for retributive sentences.

USA

As the only country in the western world which uses the death penalty, a nation which has frequently criticised the human rights records of its international rivals including the USSR and China (historically) and numerous Middle Eastern nations, and a country which likes to claim itself as a ‘shining city on the hill’ for liberal democracy, it has been heavily criticised for its continuing use of capital punishment. Occasional miscarriages of justice, and scientific reports on the pain/degrading nature of some of its methods of execution (firing squad, hanging, lethal injection, electrocution and gas chamber) have brought even more controversy to the USA’s policy. The federal set up of the country, and its deeply entrenched constitution makes this issue even more complex for the USA.



Yemen

Method of execution – stoning permitted for civilians.

Leading executioners (2017)

Figures below excluding China and Iran, who are said by NGOs to carry out ‘thousands’ and ‘hundreds’ of executions annually respectively:

1. Saudi Arabia – 146
2. Iraq – 125
3. Pakistan – 65
4. Egypt – 35
5. USA – 23



Timeline of Events

Date	Description
1700s B.C.	The Code of Hammurabi was written (Ancient Babylonia, modern-day Iraq) – the first ever recorded laws on the death penalty are contained in this document. 25 crimes were punishable by death, including adultery and helping slaves to escape, but not including murder

- 1767 Cesare Beccaria (considered by many to be the father of criminal law and justice) published his penology treatise 'On Crimes and Punishments' which condemned torture and the death penalty. This is said to have catalysed the early stages of the abolitionist movement
- WW1 & WW2 There was a surge in executions. As has been the case in many major wars throughout history, thousands were executed for military offences

Please see other document ('country-by-country stance on the death penalty') for more detailed account including dates when each nation abolished the death penalty (if applicable) and when each nation most recently carried out an execution.

Relevant UN Treaties and Events

Universal Declaration of Human Rights

The UDHR was adopted by the General Assembly on 10th December 1948 with 48 of its then 58 members voting for, 0 voting against, 8 abstaining and 2 not voting.

- Article 3: everyone has 'the right to life'
- Article 5: no one should 'be subjected to torture or to cruel, inhuman or degrading treatment or punishment'

Convention on the Rights of the Child

The UNCRC is the most widely ratified human rights treaty in history – 196 countries are parties to the treaty (some with states reservation or interpretations). This includes all-but-one member of the United Nations, plus the Cook Islands, Niue, the State of Palestine and the Holy See. Every nation which has ratified the treaty is bound by it in international law, and compliance is monitored by the UN Committee on the Rights of the Child and by the General Assembly.

Notable places the treaty does not apply: the USA (has signed but not ratified the convention); Somalia (domestic ratification finished in January 2015 and Somalia, a Failed State, has not sought renewal); Akrotiri and Dhekelia (does not apply); Gibraltar (does not apply); Guernsey (does not apply); and Tokelau (does not apply).

Special circumstances: South Sudan did not sign, but have now ratified, the convention; all successor states of Czechoslovakia and Yugoslavia (Bosnia and Herzegovina, Croatia, Czech Republic, Macedonia, Montenegro, Serbia, Slovenia, and Slovakia) have neither signed nor ratified the treaty, but have made declarations of succession and apply it.

- Article 1: 'a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier'
- Article 6 (1): 'every child has the inherent right to life'
- Article 40 (1): calls for 'every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms

of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society

- Article 40 (3a): calls for 'the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law'

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This treaty was adopted in 1984 and came into force in 1987, and currently has 164 parties. It has been accepted as international law, and is primarily used to protect citizens from torture. It does not specifically state that the death penalty is not permitted, but can certainly be used in the case for a moratorium on the use of the death penalty.

Previous Attempts to solve the Issue

At the United Nations

18 December 2007 – the EU (at Italy's instigation, and in partnership with 8 co-author member states) presented a resolution on the moratorium on the use of the death penalty. It called for the general suspension (not abolition) of capital punishment throughout the world. It passed with 104 votes for, 54 against and 29 abstentions in the General Assembly. Like all General Assembly resolutions, it is not binding on any state.

By human rights organisations

Amnesty International, and numerous other human rights groups have published reports, created databases and campaigned for the abolition of the death penalty. (See bibliography for examples.)

Possible Solutions

For delegates representing abolitionist states:

- Encouraging member states to introduce a moratorium on the use of the death penalty
- Encouraging member states to review and alter (if necessary) their legislation in regard to the use of the death penalty, the age of adult criminal responsibility, the crimes which are capital, etc.
- Encouraging all retentionist states to reduce the number of executions, and all abolitionist states not to reintroduce it
- Encouraging member states to introduce more prudent regulation and monitoring systems on the judicial process with regard to capital crimes

- Introducing independent databases and monitoring systems on the use of the death penalty
- Encouraging member states to review and alter (if necessary) their regulation on the treatment of prisoners on death row
- Introducing / increasing the power of governmental or independent databases, monitoring systems and investigative institutions on the treatment of prisoners on death row
- Creating new bodies or reforming current bodies to oversee work

For delegates representing retentionist states:

- Measures to protect nations from institutions and nations which seek to infringe on their sovereignty
- Encouraging member states to introduce more prudent regulation and monitoring systems on the judicial process with regard to capital crimes
- Encouraging member states to review and alter (if necessary) their regulation on the treatment of prisoners on death row
- Introducing / increasing the power of governmental or independent databases, monitoring systems and investigative institutions on the treatment of prisoners on death row

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