

## Strengthening Measures for Universal Abolishment of Capital Punishment in Member States

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### Introduction

In countries wherein the statute permits, offenders are sentenced to death and executed after conviction by a court of law. Whether it be drug-cartel, protest, or murder, capital punishment is often prescribed to the minority that have committed grave forms of a crime – sometimes regarding those that do not necessarily involve the loss of life, including adultery and blasphemy. Often in democratic regimes, those in favor of the death penalty agree with George W. Bush’s statement that the death penalty is reasonable “because it saves other people’s lives,” as to extirpate impunity. Yet, on the other hand, there are also absolute renunciations to it for its breach of human rights as enshrined in the Universal Declaration of Human Rights (UDHR), including the right to life and the right to live free from torture or cruel, inhuman, or degrading punishment.

Different stances have evoked different questions: Can capital punishment be justified under certain crimes defined by the state’s sovereign law, regardless of the varying intensity? If not, should capital punishment only be applied to those who breached customary international laws, or should it be obliterated as a whole?

As more states move away from the trend of capital punishment today, others that still enforce this policy continue to raise global concerns. Regardless of different voices, however, tackling the line between sovereignty and international obligation deems necessary in the process of abolishing capital punishment worldwide to foster a better living space for all.

### Background

Long since Ancient China, capital punishment has been effectively utilized as a mechanism to punish the wrongdoers. Yet, it wasn’t until the renowned Hammurabi’s Code in the 18<sup>th</sup> century B.C. punishment was legalized in the form of a written document. Although it excluded murder, King Hammurabi codified capital punishment for 25 different crimes, including stealing goods from temples or houses and bearing false witness in a case that involves the loss of life. Capital punishment has also been sanctioned at one time or another by the world’s universalizing religions, including Judaism and Christianity: “Whosoever sheddeth man’s blood, by man shall his blood be shed” (Genesis 9:6).



*The Code of Hammurabi*

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Of many times in history, capital punishment has been codified to an extent, with various execution techniques employed to carry out the prescription. Mosaic Law, for instance, granted stoning, hanging, beheading, crucifixion, and sawing asunder for those who committed capital crimes. This policy eventually led to the infamous execution in approximately 29 A.D., the crucifixion of Jesus Christ. Adopted from the early Roman Law of the Twelve Tablets, crucifixion was used to punish the criminals of varying social classes, and other forms of punishment were noted to be the cruelest during the time of the Roman Empire. Dissidents may have arisen even during these times, though swiftly controlled and thus not documented, but death penalty imposed on Socrates in 399 B.C. for his heresy and the corruption of youth indeed raised controversies that still exist hitherto.

While Socrates claimed that “he owed it to the city under whose laws he had been raised to honour those laws to the letter,” more recent cases

regarding capital punishment have disclosed the illegitimacy of executing innocent people, sometimes referred to as an extrajudicial killing. For instance, Illinois Governor George Ryan’s moratorium on executions in May 1999 due to consecutive exonerations of death row inmates helped prove that thirteen of them were innocent. The Governor



*The Death of Socrates*

stated, “I cannot support a system which, in its administration, has proven to be so fraught with error, and has come so close to the ultimate nightmare, the state’s taking of innocent life.” Miscarriages of justice like this, however, also exist in countries other than the United States of America. Wrongly convicted individuals have been executed in nations including China, Japan, Malaysia, Malawi, Pakistan, Turkey, Iran, Saudi Arabia, Philippines, and errors like these were more likely when there is a crackdown on crime or when notorious crimes place pressure on police to make a hurried arrest.

Furthermore, while capital punishment is not prohibited under international laws, the Universal Declaration of Human Rights, which the U.S. helped draft in the aftermath of World War II and adopted in 1948, fundamentally claims capital punishment as violating human rights. Specifically, under Article 3, life is categorized as a human right, and considering that capital punishment is often used disproportionately against members of the disadvantaged in a discriminatory fashion, abolitionists argue that it breaches Articles 2 and 7 of the UDHR. As affirmed by the preamble of the document, capital punishment has been regarded as a violation of human dignity by many, and by the 1998/8 resolution of 3 April 1998, the Commission on Human Rights has called on states that still maintain the punishment “to establish a moratorium on executions, with a view to completely abolishing the death penalty.” Yet, continued calls for capital punishment in several parts of the globe poses threat to the containment of capital punishment.

## International Actions

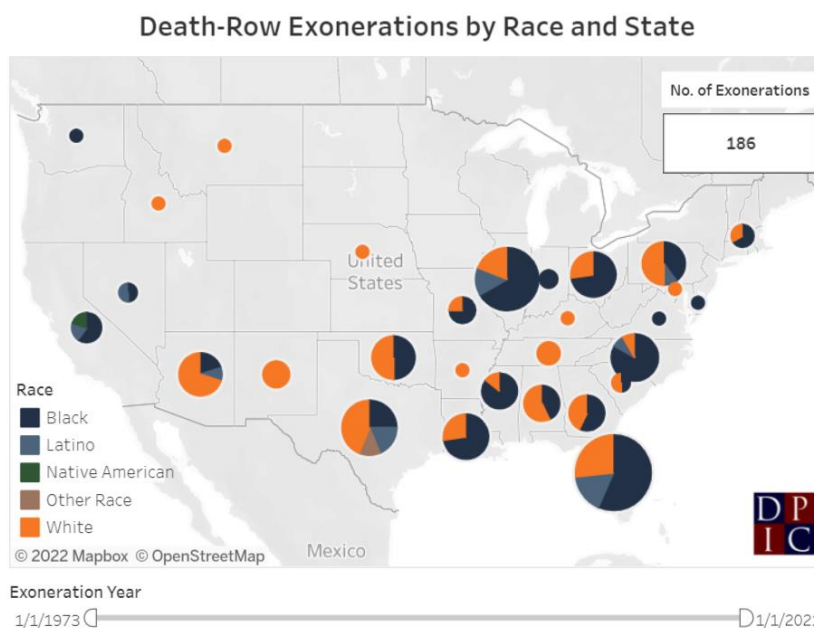
International conventions, treaties, and criminal justice systems, alongside empirical studies worldwide, yield an interesting contextualization of the historical debate regarding capital punishment and the current trend towards abolishing it. In an increasingly global society where transnational law evolves, protecting people from capital punishment has transformed into one of the most crucial considerations humanities should make. As human-beings living in such a conscientious world, the abolition of capital punishment is necessary to promote human dignity under the international law.

Today, the majority of nations have abolished the death penalty either completely or in practice. By April 2004, seventy-nine countries had abolished the penalty, fifteen countries were abolitionists for ordinary crimes, and twenty-three

countries were "abolitionist de facto." In eight retentionist countries that account for the 57% of the world's population, however, premediated killing of humans still perpetuates, with the United States of America being a disparate from the traditional Western European allies. Although a minority of countries has failed to eliminate capital punishment, the international community continues to promulgate treaties facilitating worldwide eradication, with transnational voices shaping the norms and standards of human rights.

Throughout history, the international community has adopted several protocols and actions that promote the universal abolishment of capital punishment, including the following but are not limited to:

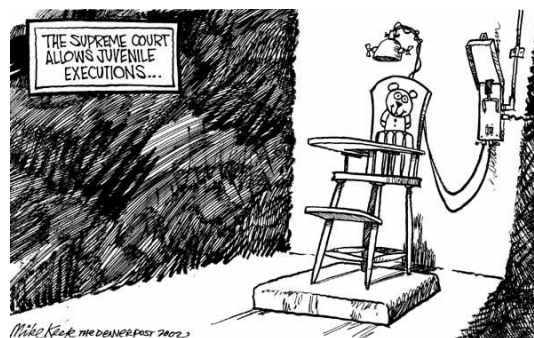
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,
- Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty (ECHR6) and Protocol No. 13 to the European Convention on Human Rights, concerning the abolition of the death penalty without exception,
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty,



*Death-Row Exonerations by Race and State in the United States of America*

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- The Vienna Convention on Consular Relations and Optional Protocols (VCCR), guaranteeing defendants a fair trial,
- The Convention on the Rights of the Child (CRC), unequivocally prohibiting capital punishment for juveniles,
- International Covenant on Civil and Political Rights (ICCPR), placing strict due process requirements on capital punishment such as juvenile executions and inhumane punishment.



*A Political Cartoon of Juvenile Executions*

## Positions of Key Organizations/ Countries

### *American Civil Liberties Union (ACLU)*

The ACLU believes that capital punishment “inherently violates the constitutional ban against cruel and unusual punishment and the guarantees of due process of law and of equal protection under the law.” They state that the state has no right to kill people with premeditation and ceremony in an arbitrary and discriminatory fashion, claiming that it is justifiable under the its sovereign law. Furthermore, they say that capital punishment is a waste of taxpayer funds and has no public benefit because it does not deter violent crimes. A punishment can be an effective deterrent only if it is consistently and promptly employed, but the ACLU doesn’t see that capital punishment aligns with these conditions to be administered. To advocate for the universal abolition of such punishment, the ACLU has initiated the Capital Punishment Project to “repeal death penalty in the United States through strategic litigation, advocacy, public education, and training programs for capital defense teams.”

### *World Coalition Against the Death Penalty*

Created in Rome on the 13<sup>th</sup> of May, 2002, the World Coalition Against the Death Penalty is an alliance of more than 160 NGOs, bar associations, local authorities and unions. It aims to strengthen deterrence of death penalty in an international level with the objective of obtaining universal abolishment of capital punishment. By

advocating for a definitive end to death sentences and executions in several countries that still entertain such practices, the World Coalition seeks to also reduce capital punishment. More specifically, the World Coalition is striving to achieve these aims by supporting its member organizations, local, national, and regional abolitionist forces and coordinating the international advocacy towards worldwide abolition of the death penalty.



*World Coalition Against the Death Penalty Logo*

### *United States of America (USA)*



Thirty of the 50 states in the USA have legalized death penalty, allowing for capital punishment to be perpetrated and executions to be carried out by the government on a state level. When necessary, the federal government also participates in capital punishment. The USA has the highest incarceration rate in the world and more than 2 million prisoners, thousands of whom are currently on Death Row. The death penalty was reenacted in the U.S. back in 1976, and ever since, the U.S. has been responsible for about 1,493 deaths due to capital punishment sentences.

Recently, the shifting public opinions on capital punishment has influenced politics in the USA. Moving away from Trump's administration, Joe Biden's campaign stated, "Because we cannot ensure we get death penalty cases right every time, Biden will work to pass legislation to eliminate the death penalty at the federal level, and incentivize states to follow the federal government's example." Yet, as no legislation has been submitted regarding the elimination of death penalty, it still seems unsure that there would be change in the recent future.



*The Dynamics of Public Opinion on Capital Punishment in the USA*

### *China*

The Chinese government continues to be the world's leading executioner and operates unusually in capital punishment. Unlike places like the United States, where death penalty cases are made public, and execution dates are announced, China has a rule that states all death penalty executions must remain private and confidential. Thus, they are deemed a secret, and even the families won't know until after it has occurred.

The Chinese judicial system has ruled all cases where the death penalty is involved must be treated as secrets. Thus, no one can know that the act is being carried out beforehand, and it is infrequent for any news coverage to report on the executions after the fact, either. As a matter of fact, a few thousand death penalty executions are carried out over one year and approximately five and a half executions per day for three hundred sixty-five days in a row.



*A Chinese Person Waiting for His Execution in Public*

## Possible Solutions

Today, over 70% of the world's countries have abolished capital punishment in law or practice, according to Death Penalty Information Center. Yet, several countries still execute capital punishments, with the perpetuation of infrequent news coverage of the executions, as it often involves unethical mechanisms and the practice of rule-by-law, where the government authorities are somehow above the law. By contrast, the concept rule-of-law is the restriction of the arbitrary exercise of power by subordinating it to well-defined and established laws.

Examining the death penalty from a human rights perspective not only highlights the impact of denying the most basic right on all other rights but also demonstrates why the only “solution” to the death penalty is to permanently end its use. If the injustices and practicalities associated with capital punishment could somehow be erased—the costs cut, the racial and class biases removed, and all possibilities for “error” eliminated—the government still cannot do it because it violates fundamental human rights.

As the issue is multifaceted and requires a complex approach through both legal and political frameworks, it is suggested that delegates cooperate through multiple discussions in reaching a consensus. Of the many, three ways to resolve this issue include the following:

1. Clear categorization of human rights in an international level. Capital punishment may clearly be classified as a violation of human rights under ‘*lex lata*’. Accountability and access to international community should be guaranteed in this process of categorization that obligates all member states to reaffirm the customary international law ban on the universal use of the death penalty.
2. Adopting national legislation to replace capital punishment into alternatives deemed more effective and to achieve full realization of the rights of individuals. In order to realize this, abolitionist nations should be responsible for educating the global community on the impact of state-sanctioned homicide by challenging ideological

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- justifications for violence and pressuring the retentionist nations to make changes.
3. Providing mechanisms for the citizens in a certain country to minimize antipathies over the abolition of death penalty. Considering that support for the death penalty is significantly higher among higher social classes, delegates may consider ways to reduce antagonisms induced from probable inequities within a society's justice system.

### Glossary

*Capital Punishment:* execution of an offender or offenders after prescription from the law by beheading, electrocution, hanging, lethal injection, or shooting.

*Juvenile executions:* killing of children and teenagers under the age of maturity. International human rights law has long prohibited the use of the death penalty against people who were younger than age 18 at the time of the offense.

*Impunity:* exemption from punishment or escape from fines. In international human rights terms, it refers to the failure of bringing offenders of human rights violations to justice and thus undermining the rights and liberties of the victims.

*Extrajudicial executions:* the deliberate killing of an individual by the state without a due procedure of judgment affording all judicial guarantees, such as a fair and unbiased procedure.

*Death Row:* a principle of the international law which forbids persecution of victims. This principle is a key part of the refugee law, and it differs from political asylum in that political asylum applies to people that receive distinct persecution according to their status in society, while non-refoulment is just a generic term that refers to people who are involved with disasters or wars.

*Customary International Law:* to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation.

*Retributivism:* both a general theory of punishment of how much each particular offender should be punished.

### Timeline

18<sup>th</sup> century B.C. – Death penalty laws are first established



*A Person on Death Row in Texas*

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1000 A.D. – William the Conqueror will not allow persons to be hanged except in cases of murder.

1608 – Captain George Kendall becomes the first recorded execution in the new colonies.

1632 – Jane Champion becomes the first woman executed in the new colonies.

1767 – Cesare Beccaria's essay, *On Crimes and Punishment*, theorizes that there is no justification for the state to take a life.

Late 1700s – United States abolitionist movement begins.

1823-1837 – Over 100 of the 222 crimes punishable by death in Britain are eliminated.

1834 – Pennsylvania becomes the first state to move executions into correctional facilities.

1930s – Executions reach the highest levels in American history - average 167 per year.

1948 – The United Nations General Assembly adopted the Universal Declaration of Human Rights proclaiming a “right to life.”

1950-1980 – De facto abolition becomes the norm in western Europe.

1958 – *Trop v. Dulles*. Eighth Amendment's meaning contained an “evolving standard of decency that marked the progress of a maturing society.”

1966 – Support of capital punishment reaches all-time low. A Gallup poll shows support of the death penalty at only 42%.

June 1972 – *Furman v. Georgia*. Supreme Court effectively voids 40 death penalty statutes and suspends the death penalty.

1977 – *Coker v. Georgia*. Held death penalty is an unconstitutional punishment for rape of an adult woman when the victim is not killed.

1986 – *Batson v. Kentucky*. Prosecutor who

strikes a disproportionate number of citizens of the same race in selecting a jury is required to rebut the inference of discrimination by showing neutral reasons for his or her strikes.

1987 – *McCleskey v. Kemp*. Racial disparities not recognized as a constitutional violation of “equal protection of the law” unless intentional racial discrimination against the defendant can be shown.

1988 – *Thompson v. Oklahoma*. Executions of offenders aged fifteen and younger at the time of their crimes is unconstitutional.

1989 – *Stanford v. Kentucky*, and *Wilkins v. Missouri*. Eighth Amendment does not prohibit the death penalty for crimes committed at age sixteen or seventeen.

1989 – *Penry v. Lynaugh*. Executing persons with “mental retardation” is not a violation of the Eighth Amendment.

1993 – *Herrera v. Collins*. In the absence of other constitutional grounds, new evidence of innocence is no reason for federal court to order a new trial.

April 1999 – U.N. Human Rights Commission Resolution Supporting Worldwide Moratorium on Executions.

2002 – *Atkins v. Virginia*. the execution of “mentally retarded” defendants violates the Eighth Amendment's ban on cruel and unusual punishment.

March 2009 – Governor Bill Richardson signs legislation to repeal the death penalty in New Mexico, replacing it with life without parole.

Apr. 10, 2020 – Healthcare Workers Ask States to Release Execution Drugs to Fight COVID-19.



*A Scene from Furman v. Georgia Case*



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Dec. 4, 2020 – COVID-19 (Coronavirus) Has Killed More US Prisoners in 2020 than the Death Penalty in over Five Decades.



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