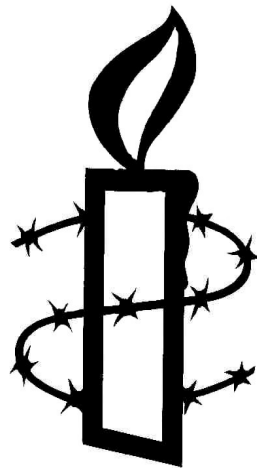

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UN GENERAL ASSEMBLY 2008: IMPLEMENTING A MORATORIUM ON EXECUTIONS



Executive summary

In October 2008 the Third Committee of United Nation's General Assembly (UNGA) will again debate the death penalty and the Secretary-General's report on the implementation of resolution 62/149 "Moratorium on the use of the death penalty". The resolution was adopted with strong cross-regional support: 104 votes in favour, 54 against and 29 abstentions. A minority of states subsequently formally objected to any attempt to impose a moratorium on executions or abolition of the death penalty. This paper rebuts their arguments against a moratorium on the use of the death penalty or its abolition and outlines Amnesty International's main recommendations for the UNGA 63rd session in 2008.

The UNGA as the main UN deliberative body with universal membership must continue to debate and make recommendations on the issue of the death penalty and call for prompt and full implementation of the resolution in line with the world-wide trend towards abolition. Amnesty International urges *all* Member States to engage constructively in a debate on the report of the UN Secretary-General on the implementation of Resolution 62/149.

Recommendations

Amnesty International calls on the UN General Assembly, at its 63rd session, to adopt a resolution:

Welcoming moratoriums declared during the year;

Welcoming abolitions of the death penalty during the year;

Welcoming ratifications of the 2nd Optional Protocol to the ICCPR and regional protocols;

Deploring any reintroduction of the death penalty, ending of moratoriums, and continuing use of the death penalty;

Expressing concern about the failure of some states to respect internationally agreed safeguards;

Affirming that the death penalty violates the right to life and the right not to be subjected to cruel, inhuman or degrading punishment;

Calling again on states to respect international standards which protect those facing the death penalty and to provide information on how those rights are being respected;

Calling on states that have not abolished the death penalty not to extend the application of the death penalty to crimes to which it does not presently apply, and to establish a moratorium on executions as a matter of urgency; and

Requesting the Secretary-General to report to the 64th session of the UN General Assembly on implementation of the resolution.

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“Today’s vote represents a bold step by the international community. I am particularly encouraged by the support expressed for this initiative from many diverse regions of the world. This is further evidence of a trend towards ultimately abolishing the death penalty” UN Secretary-General Ban Ki Moon, 18 December 2007.

1. Introduction

The adoption by the UN General Assembly (UNGA) of the resolution on a moratorium on the use of the death penalty (Resolution 62/149) on 18 December 2007 is an important human rights and political development towards the worldwide abolition of capital punishment. Resolution 62/149 was adopted with strong cross-regional support: 104 votes in favour, 54 against and 29 abstentions. (See Annex II for voting sheet.) The resolution reaffirms in unequivocal terms the commitment of the UN towards abolition. Resolution 62/149 expresses deep concern about the application of the death penalty and calls upon states that still maintain it to, *inter alia*, respect international safeguards guaranteeing the rights of those facing the death penalty, to reduce the number of offences for which the death penalty may be imposed and “to establish a moratorium on executions with the view to abolishing the death penalty”. (See Annex I for the full text of Resolution 62/149.) The resolution also requests the UN Secretary-General to report at the 63rd session (2008) on the implementation of the resolution.

A minority of states subsequently formally objected to any attempt to impose a moratorium on executions or abolition of the death penalty in a Note Verbale of 11 January 2008 addressed to the UN Secretary-General.¹

They substantiate their objection by stating that: there is no international consensus that the death penalty should be abolished; capital punishment is a criminal justice, rather than a human rights issue; the principles of the UN Charter (notably Article 2 paragraph 7) stipulate that the UN is not authorized to intervene on matters that are within the domestic jurisdiction of the state, the death penalty being one such issue; and no Member State has the right to impose its standpoint on another.

¹ See: A/62/658. The following states signed the Note Verbale: Afghanistan, Antigua and Barbuda, the Bahamas, Bahrain, Bangladesh, Barbados, Botswana, Brunei Darussalam, the Central African Republic, China, the Comoros, the Democratic People’s Republic of Korea, Dominica, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Grenada, Guinea, Guyana, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Japan, Jordan, Kuwait, the Lao People’s Democratic Republic, the Libyan Arab Jamahiriya, Malaysia, Maldives, Mauritania, Mongolia, Myanmar, Nigeria, Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Solomon Islands, Somalia, the Sudan, Suriname, Swaziland, the Syrian Arab Republic, Thailand, Tonga, Trinidad and Tobago, Uganda, the United Arab Emirates, Yemen and Zimbabwe.

While the stance of these 58 governments represents a minority within the 192 UN member states, it seeks to challenge the very competence of the UNGA to deal with the question of the death penalty.

This brief paper rebuts their arguments and outlines Amnesty International's main recommendations to the UNGA 63rd session (2008) on the question of the death penalty.

2. The trend towards worldwide abolition of the death penalty

While there is as yet no international consensus on abolition of the death penalty, the adoption of Resolution 62/149 means that a large majority of UN Member States from all regions of the world are in favour of a moratorium on the use of the death penalty. It is also significant that the resolution was adopted in plenary with five more votes in favour than when voted on in the Third Committee two months earlier.

The strong, cross-regional, support reflects a historically undeniable trend towards abolition of the death penalty in all regions of the world. In 1977, just 16 countries had abolished the death penalty for all crimes. As of May 2008, that figure stands at 91. Eleven other countries have abolished the death penalty for ordinary crimes and retain the death penalty only for exceptional crimes such as crimes under military law or crimes committed in wartime. A further 35 countries can be considered "abolitionist in practice" as they have not carried out an execution for at least 10 years or have made an international commitment not to use the death penalty. This brings the total number of countries that have currently abolished the death penalty in law or practice to 137. This trend is also reflected in the steady increase in the number of states parties to international and regional treaties providing for the abolition of the death penalty.

Of the 60 retentionist countries, only 24 are known to have carried out executions in 2007. Eighty eight percent of all known executions took place in five countries: China, Iran, Pakistan, Saudi Arabia and the USA

3. The death penalty is a human rights issue

Although some states' penal laws provide for the death penalty, it is also a human rights issue, and the UN, including the UNGA, has recognized it as such. It is entirely appropriate and consistent with its past resolutions that the UNGA should continue to do so.

The UN has long been concerned about the human rights dimensions of the death penalty. The International Covenant on Civil and Political Rights (ICCPR), adopted by the UNGA in 1966, sets out restrictions and safeguards to be observed in death penalty cases in countries which have not abolished the death penalty (Article 6). In ratifying the Convention on the Rights of the Child, adopted by the UNGA in 1989, 193 states², including all 58 states that signed the Note Verbale,

² The only UN member states not to have ratified the Convention are Somalia and the USA. Somalia is currently unable to proceed to ratification as it has no recognized government. By signing the Convention, the United States has signalled its intention to ratify—but has yet to do so.

have accepted a distinct human rights obligation that restricts the use of the death penalty: not to execute child offenders (Article 37(a)). Some of these restrictions on the death penalty have been deemed to amount to norms of customary international law³

In 1984 the Economic and Social Council (ECOSOC) adopted the *Safeguards guaranteeing protection of the rights of those facing the death penalty* (endorsed in UNGA resolution 39/188, adopted without a vote). ECOSOC adopted further resolutions on the implementation of the Safeguards in 1989 and 1996⁴. The UN has also published quinquennial surveys of capital punishment and the implementation of the Safeguards.

4. The death penalty violates human rights

Indeed there is growing recognition that the death penalty violates human rights, such as the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment.

The community of states has adopted four international treaties providing for the abolition of the death penalty, namely the *Second Optional Protocol to the International Covenant on Civil and Political Rights*, aiming at the abolition of the death penalty, adopted by the UNGA in 1989; *Protocols No. 6 and No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights), adopted by the Council of Europe in 1982 and 2002 respectively; and the *Protocol to the American Convention on Human Rights to Abolish the Death Penalty*, adopted by the General Assembly of the Organization of American States in 1990.

While Article 6 of the International Covenant on Civil and Political Rights (ICCPR) does not explicitly prohibit the death penalty, it imposes a wide range of restrictions on its use in countries that have not abolished capital punishment.

Article 6, in the words of the Human Rights Committee that supervises implementation of the ICCPR, "refers generally to abolition [of the death penalty] in terms which strongly suggest (paragraphs 2(2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life".⁵ Indeed, the Human Rights Committee has repeatedly urged states parties to the ICCPR to abolish the death penalty.

³ General Comment 24 on Issues relating to reservations made upon ratification or accession to the ICCPR or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, adopted on 4 November 1994 by the Human Rights Committee set up under the ICCPR, paragraph 8 (referring to the prohibition on executing pregnant women or children under Article 6 of the ICCPR).

⁴ Resolutions 1989/64 of 24 May 1989 and 1996/15 of 23 July 1996, adopted without a vote.

⁵ General Comment 6 on Article 6 of the ICCPR.

5. Human rights and criminal justice issues are within the purview of the UN

Since the adoption of the UN Charter in 1945, the UN has taken action on human rights matters in many areas that would formerly have been considered solely within a State's domestic jurisdiction. Sixty years after the adoption of the UN Charter the 2005 World Summit of the UN recognized that human rights as one of the three pillars of the UN, along with peace and security, and development.

Since 1945 the UN has adopted numerous human rights treaties thereby recognizing the obligation that a range of domestic criminal justice matters must meet international human rights standards. Articles 10 and 16 (fair trials) of the Universal Declaration of Human Rights deal with criminal justice matters, as do numerous articles of the ICCPR, as well as other international human rights treaties. In ratifying these treaties, states have accepted the human rights obligations set out in them.

When the UNGA established the Human Rights Council⁶ it gave it a broad mandate including the monitoring of human rights in all countries. Furthermore, the Security Council has established international criminal tribunals for the former Yugoslavia and Rwanda that directly affect criminal justice matters within these states' domestic jurisdiction. UN Member States also established the International Criminal Court, which has jurisdiction over grave international crimes within states' domestic jurisdiction.⁷

6. Conclusion

The UNGA as the main UN deliberative body with universal membership must continue to debate and make recommendations on the issue of the death penalty and encourage the trend towards abolition. The UNGA has adopted, over many years, human rights standards on the death penalty as well as resolutions, in 1971 and 1977, proclaiming the desirability of abolishing the death penalty.⁸ Resolution 62/149 is a natural development of these previous actions by the UNGA. Amnesty International urges *all* Member States to engage constructively in a debate on the report of the UN Secretary-General on the implementation of Resolution 62/149.

⁶ The Human Rights Council replaced the Commission on Human Rights

⁷ It is significant to note that the Rome Statute of the International Criminal Court (ICC), which has been ratified or acceded to by 105 states, excludes the death penalty from the punishments which that Court is authorized to impose, even though the ICC has jurisdiction over genocide, war crimes and crimes against humanity. The same is also true for the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Special Panels for Serious Crimes in Dili, Timor-Leste, and the Extraordinary Chambers in the Courts of Cambodia.

⁸ In the 1971 resolution, the UNGA affirmed that "the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed" (Resolution 2857 (XXVI) of 20 December 1971 on capital punishment adopted without a vote.) That objective was reaffirmed by the UNGA in resolution 32/61 of 8 December 1977, adopted without a vote (Resolution 32/61 reaffirmed that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed, with a view to the desirability of abolishing this punishment".) It is significant that both resolutions cited the right to life.

Recommendations

Amnesty International calls on the UN General Assembly, at its 63rd session, to adopt a resolution:

Welcoming moratoriums declared during the year;

Welcoming abolitions of the death penalty during the year;

Welcoming ratifications of the 2nd Optional Protocol to the ICCPR and regional protocols;

Deploring any reintroduction of the death penalty, ending of moratoriums, and continuing use of the death penalty;

Expressing concern about the failure of some states to respect internationally agreed safeguards;

Affirming that the death penalty violates the right to life and the right not to be subjected to cruel, inhuman or degrading punishment;

Calling again on states to respect international standards which protect those facing the death penalty and to provide information on how those rights are being respected;

Calling on states that have not abolished the death penalty not to extend the application of the death penalty to crimes to which it does not presently apply, and to establish a moratorium on executions as a matter of urgency; and

Requesting the Secretary-General to report to the 64th session of the UN General Assembly on implementation of the resolution.

Annex I - UNGA Resolution 62/149 - Moratorium on the use of the death penalty

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

Recalling also the resolutions on the question of the death penalty adopted over the past decade by the Commission on Human Rights in all consecutive sessions, the last being resolution 2005/59 of 20 April 2005, in which the Commission called upon States that still maintain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions,

Recalling further the important results accomplished by the former Commission on Human Rights on the question of the death penalty, and envisaging that the Human Rights Council could continue to work on this issue,

Considering that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable,

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty,

1. *Expresses its deep concern* about the continued application of the death penalty;
2. *Calls upon* all States that still maintain the death penalty:
 - (a) To respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
 - (b) To provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing protection of the rights of those facing the death penalty;
 - (c) To progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;

(d) To establish a moratorium on executions with a view to abolishing the death penalty;

3. *Calls upon* States which have abolished the death penalty not to reintroduce it;

4. *Requests* the Secretary-General to report to the General Assembly at its sixty-third session on the implementation of the present resolution;

5. *Decides* to continue consideration of the matter at its sixty-third session under the item entitled "Promotion and protection of human rights".

*76th plenary meeting
18 December 2007*

Annex II – Vote on a Moratorium on the use of the death penalty (extract from GA/10678, Annex VI)

The draft resolution on a moratorium on the use of the death penalty (document A/62/439/Add.2) was adopted by a recorded vote of 104 in favour to 54 against, with 29 abstentions, as follows:

In favour: Albania, Algeria, Andorra, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Cape Verde, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Kazakhstan, Kiribati, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Moldova, Monaco, Montenegro, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Samoa, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uruguay, Uzbekistan, Vanuatu, Venezuela.

Against: Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Chad, China, Comoros, Democratic People's Republic of Korea, Dominica, Egypt, Ethiopia, Grenada, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Libya, Malaysia, Maldives, Mauritania, Mongolia, Myanmar, Nigeria, Oman, Pakistan, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Solomon Islands, Somalia, Sudan, Suriname, Syria, Thailand, Tonga, Trinidad and Tobago, Uganda, United States, Yemen, Zimbabwe.

Abstain: Belarus, Bhutan, Cameroon, Central African Republic, Cuba, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Fiji, Gambia, Ghana, Guinea, Kenya, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Malawi, Morocco, Niger, Republic of Korea, Sierra Leone, Swaziland, Togo, United Arab Emirates, United Republic of Tanzania, Viet Nam, and Zambia.

Absent: Guinea-Bissau, Peru, Senegal, Seychelles, and Tunisia.