

<b>Forum:</b>	Legal Committee
<b>Issue:</b>	Reconsideration of international law on the death penalty
<b>Student Officer:</b>	Aurelia Kotsiri
<b>Position:</b>	Co-Chair

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## PERSONAL INTRODUCTION

My name is Aurelia Kotsiri. I have been participating in MUN conferences for four years and therefore I have gained a sufficient amount of experience having served as both a delegate and a student officer many times. At the upcoming PSMUN conference I will be serving as a co-chair in the Legal Committee and it will be my second time attending a PSMUN conference as a student officer.

I hope this study guide will aid all the delegates in forming a clear understanding of the topic and drafting a well-written resolution, based on their countries' policies, which will provide a good debate during the conference.

I look forward to meeting you all at the conference,

Aurelia Kotsiris

## INTRODUCING TOPIC

The death penalty is a government sanctioned practice whereby someone is placed to death for committing unlawful acts. The ways in which a prisoner is killed are by lethal injections, shootings, hanging or the electrical chair shocks. This form of penalty has been used for as long as the beginning of recorded history, ranging from Ancient Greece to the Middle Ages to the contemporary era.

However, as political changes took place so did changes in public opinion on the death penalty, a matter which is now considered a constant source of controversy. People such as Albert Camus have shown through their writing a strong advocacy against the death penalty in the 1940s. This is because it has been noted to be unjust and unfair as the fate of the people who get prosecuted largely depends on their race and wealth. It also provides no public safety benefit as it does not encourage a decrease in crimes. Studies have shown that states without the death penalty have lower homicide rates than those that still practice the death penalty<sup>1</sup>. It is also vitally important to note that the death penalty may even result in the prosecution of an innocent person. This may be due to the lack of forensic evidence presented in the court or corrupt bureaucratic practices in the government.

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<sup>1</sup> <http://www.deathpenaltyinfo.org/deterrence-states-without-death-penalty-have-had-consistently-lower-murder-rates>

Most nations have now completely abolished the death penalty. However, over 60% of the world's population lives in areas where executions take place. Indonesia, China, India, Iran, Democratic Peoples Republic of Korea and the United States of America are examples of some of the main countries in which the death penalty is still practiced. A classical example of death penalty includes the practice of Wahhabism, a radical type of Islam in Saudi Arabia which has led to 157 executions<sup>2</sup> in 2015. The issues caused by the implementation of the death penalty have ethical, humanitarian and legal aspects.

## KEY TERMS

### International Law

“The body of law that governs the legal relations between or among states or nations.” These laws may differ between each state's legal system and each member state is not legally obliged to abide by the law. International laws are divided into 3 categories: Public International Law, Private International Law and Supranational Law. The death penalty falls under the category of public international law.<sup>3</sup>

### Public International Law

“Body of rules that is legally binding on States in their interactions with other States, individuals, organizations and other entities. It covers a range of activities; such as, diplomatic relations, conduct of war, trade, human rights and sharing of oceanic resources”<sup>4</sup>

### Death Penalty

Punishment by execution due to the commitment of a capital offence.

### Execution

The carrying out of a sentence of death on a condemned person

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<sup>2</sup> <http://www.cbsnews.com/news/saudi-arabia-beheadings-decades-executions/> CBS News

<sup>3</sup> Definition taken from: <http://legal-dictionary.thefreedictionary.com/international+law>

<sup>4</sup> Definition taken from: <https://ruwanthikagunaratne.wordpress.com/2011/03/26/lesson-1-what-is-public-international-law/>

## Capital Offence

Any criminal act that is punishable by the death penalty. It may refer to genocide, treason, aircraft hijacking, drug trafficking, and in some countries rape, economic crimes, and religious offences.

## Capital Punishment

A sanctioned practice whereby an individual is sentenced to death by the state as a result of carrying out a crime, usually carried out by a lethal injection which is the primary method. However, the electroshock, hanging and a firing squad may also be used. Although the death penalty and capital punishment tend to have the same definition, it may be said that the death penalty refers to the actual penalty being received whereas capital punishment is the entire process<sup>5</sup>.

## Retentionist

A person who advocates the retention of a law or practice; specifically a person who advocates the retention of capital (or occasionally corporal) punishment. Examples of retentionist states may include the USA, Saudi Arabia and China.<sup>6</sup>

## Abolitionist

A person who favors the eradication of a practice, particularly when concerning the death penalty; examples of countries that favor abolitionist practices may include Denmark, New Zealand, the Netherlands, Chile and many others<sup>7</sup>.

## Lethal Injection

The practice of injecting one or more drugs into a person for the express purpose of causing immediate death.

## Electrocution

A person who is executed by an electric current passing through his or her body.

## Hanging

This is a sentence which “specifically puts a person to death by suspension of the neck.” This method has been used since the medieval times. The person will eventually die due to strangulation. However, there is no severe struggle, as they go

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<sup>5</sup> <http://www.differencebetween.com/difference-between-capital-punishment-and-vs-death-penalty/>

<sup>6</sup> Definition taken from: <http://www.dictionary.com/browse/retentionist>

<sup>7</sup> Definition taken from: <http://www.dictionary.com/browse/abolition>

limp because of the blocking of the carotid arteries which blocks blood flow to the brain.

## Firing Squad

A person who is executed by shooting. This method of execution is more common amongst the military or in times of war. There is usually more than one person shooting to avoid identification of the member. In addition, the condemned person will usually be wearing a blindfold.

## HISTORICAL INFORMATION

### ETHICS AND DEATH PENALTY IN THE MODERN WORLD

Several have argued for the usage of death penalty for those who have conducted crimes such as mass murder in the 21st century. Most of these cases have originated in the US. For example, mass shooters such as James Holmes and Dylan Roof have appealed to overturn their death sentences due to claiming mental insanity. However, some lawyers have urged for the federal courts to reject such appeals by asking for more hearings and evidence.

On the other hand, legislation for the death penalty has become flexible and retentionist attitudes are emerging in some parts of the world. NGOs such as Amnesty International are worried that looser legislation would lead to more loopholes and corruption in handling the death penalty. For example, death penalty advocates in the Philippines have urged the frequent usage of capital punishment for drug-related and murder crimes. Most Filipino retentionists and President Rodrigo Duterte advocate for the frequent usage of the death penalty to decrease crime rates. However, Human Rights Watch and other abolitionists accuse Duterte of utilizing the death penalty to solidify his political power. For instance, Leila De Lima, an anti-death penalty senator, was coerced into stepping down after voicing out her concerns regarding the new Filipino death penalty bill.

Moreover, there are certain ethics conveyed by the death penalty. For example, the wrong person is sometimes executed. In the USA alone in 1976, 183 people were wrongfully executed. It also has done nothing to deter crime. Various studies carried out through the years have yet to prove that where the death penalty is still practiced the crime rates have fallen.

### DISCRIMINATION AND THE DEATH PENALTY

Discrimination is “The unjust or prejudicial treatment of different categories of people, especially on the grounds of race, age, or sex:”<sup>8</sup>The death penalty is a subject whereby discrimination takes place, and it is therefore responsible for the

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<sup>8</sup> Definition: <https://en.oxforddictionaries.com/definition/discrimination>

fate of many people. Studies confirm that race and socioeconomic background may bring about discrimination amongst a group of people making them more prone to harsher punishments such as the death penalty. For example, in the USA over 75% of the people given the death penalty were members of racial minority groups. The University of Maryland's case study revealed that the probability of an attorney advancing a case to death penalty is four times higher for African Americans than Caucasians.

In addition, those who cannot afford a lawyer and have committed a crime punishable by execution no longer have the right to a fair trial as their lawyer may not as efficiently present the jury with the facts alongside valid evidence to prove the persons innocence. Evidence to prove this is in Malaysia approximately 90 percent of the people on death row lived below the poverty line before being sentenced<sup>9</sup>. In the USA most criminal cases are those where the subjects are poor, and therefore, the general public are unaware of the issues presented in court.

### **ISIS (Islamic State of Iraq and Syria)**

ISIS is a terrorist group, which practices a radical interpretation of Islam known as Wahhabism. Under their leader Abu Bakr Al-Baghdadi, their radical beliefs have led to the execution of captives by decapitation and hanging. The Syrian Observatory reports that more than 10.000 people have been executed by ISIS. According to Shashank Joshi, a research fellow at the Royal United Services Institute, ISIS conducts these grotesque executions in order to draw attention and provoke fear globally.

### **HAS THE DEATH PENALTY INCREASED SINCE 1900?**

Although the death penalty is such a prominent issue, the number of death sentences carried out annually has gradually decreased from those in the 1900s as more states are becoming abolitionist. In 2011, at least 1923 people were sentenced to death and in 2012 that number decreased to 1722. Alarming, in 2014 the number of executions that took place rose as the number of executions in Nigeria and Egypt sparked due to political instability.

The countries that carry out the most executions are China, Iran, Pakistan, Saudi Arabia and the United States of America. China carries out the most executions worldwide. However, figures are impossible to be exact as they are a state secret. Amnesty International estimates that over a thousand people are being executed, even for less major crimes such as economic ones.

If countries such as the Philippines are to reintroduce the death penalty, Amnesty International has pointed out that the number of people to be executed annually will also increase.

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<sup>9</sup> <http://www.borgenmagazine.com/poverty-capital-punishment/>

The number of death penalties started to decrease after WW 2, where it became apparent in Europe that the death penalty was a barbaric method of punishing someone for committing a crime. These views quickly spread to other parts of the world. In addition, after WW 2 many European dictatorships collapsed. These dictators would use the death penalty primarily to get rid of opposition. This encouraged the abolitionist movement in order to avoid future leaders carrying out the same actions. In addition, the public was against it as it was very expensive, being paid for using tax payers' money.

### UN moratorium

A UN moratorium is one that consists of a law that aims to reduce the death penalty. In 1994 the first moratorium was ever presented to the United Nations GA by the Italian government that failed by 8 votes. Ever since, it has become Italy's initiative alongside the United Nations Commission of Human Rights (UNHCR) to pass a resolution that will globally abolish all death penalty. Most recently, in 2012 the United Nations once again held global moratorium on the death penalty, with high hopes towards all countries abolishing the death penalty. 111 countries voted in favor of the resolution. 41 countries had voted against the resolution and there were 34 nations who abstained. A main clause on this resolution urged all nations to "progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed" This would be achieved by refraining all executions on juveniles, pregnant women, and on people with intellectual disabilities, which in turn would also respect international standards. Countries were further asked to provide the Secretary General with information on the use of the capital punishment.

## TIMELINE OF EVENTS

1700s BC	Code of Hammurabi Codifies the Death Penalty for the First Time. "The Code of Hammurabi was a legal document from ancient Babylonia (in modern-day Iraq), that contained the first known death penalty laws.
1764	Italian Jurist Presents a Critique of the Death Penalty that influences abolitionists. It remains the most influential attack on the death penalty ever published
1790	The US establishes federal death penalty. This included all the crimes punishable by death. The first execution took place later that year
1854	Venezuela became the first country to completely abolish the death penalty

1890	The first execution by the electric chair took place.
1982	The first execution by the lethal injection took place.
2004-05	Amnesty International releases a report claiming a «disturbing rise» in the amount of executions that take place globally.
2007	The General Assembly of the UN approves the United Nations moratorium on the death penalty.
2009	All death penalty states made the lethal injection the primary method of execution
2009	The Charter of Fundamental Rights of the European Union is signed that prohibits the death penalty in Europe

## COUNTRIES AND ORGANIZATIONS INVOLVED IN THE ISSUE

### United States America

Although the US still utilizes the death penalty, the number of capital punishments carried out have decreased from 98 cases to 20 cases a year. There have been legislative proposals to scrap the death penalty in different states such as California and Delaware. Many are advocating for the eradication of the death penalty nationally, for example pharmaceutical companies that refuse to provide lethal injections and Amnesty International participants.

### China

China has seen an increase by 50% in the number of executions since 2015. However, the number of executions remains as a state secret, so all figures provided by Amnesty International are estimated. In addition, China endorses the death penalty because the nation believes that it would reduce corruption and crime rates. In fact, according to the Diplomat, 73% of its citizens supported the death penalty. Despite criticism, China has reformed its death penalty process by ensuring capital punishment sentences are checked by the Supreme Court and may consider ending the death penalty for 9 crimes.

### Saudi Arabia

Saudi Arabia practices Sharia law and executions can be seen in public places. Methodologies of execution include stoning and decapitation. According to Amnesty International, Saudi Arabia is the 3<sup>rd</sup> country in executing the highest number of people; even non-lethal crimes such as drug-related offences and armed robbery can lead to the death penalty. In fact, physically and mentally handicapped people along with youth may still be subjected to the death penalty. Amnesty international also reported that since 1980 the number of executions to have taken place in Saudi Arabia per year tripled reaching over 150 in 2007.

### Council of Europe

This is an international organization comprised of 47 member states whose main focus is promoting human rights in Europe. The death penalty has been abolished in all European countries under the Charter of Fundamental Rights of the European Union (EU) and the European Convention on Human Rights of the Council of Europe. The only country that has retained from abolishing the death penalty is Belarus.

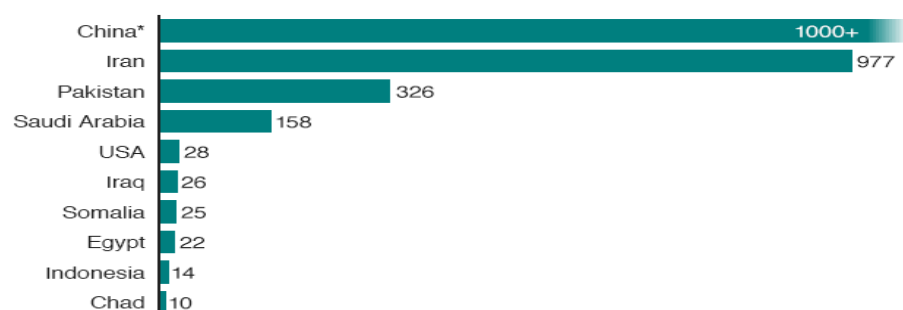
### Philippines

The Philippines has abolished the death penalty since 2006. However, the newly elected president in the Philippines, Rodrigo Duterte, is strongly in favor of bringing back the death penalty. It has been noted he wants to reintroduce the death penalty for the following offences: smuggling illegal drugs, gun-for-hire syndicates and for crimes such as rape, robbery or any form of theft where the victim is murdered.

### Amnesty International

Amnesty International is an NGO that helps fight abuse of human rights worldwide. This may include armed conflict, discrimination and living with dignity. In addition to this Amnesty International is also largely involved in the death penalty. This NGO is therefore urging all countries to immediately cease all executions and to permanently forbid any country from carrying out the death penalty. This is proposed regardless of the committed crime. Amnesty International calculates figures for the number of executions every country commits annually. This aids other governments to be aware of other governments' policies and are used to raise global awareness on the issue.

**Executions around the world, 2015**



\*Official data unavailable, but Amnesty International estimates that executions in China were in the thousands

Source: Amnesty International

BBC

**Figure 1 : Diagram showing the number of executions that took place in 2015**



## PREVIOUS ATTEMPTS TO RESOLVE THE ISSUE

The following international laws explicitly ban use of the death penalty, except during times of war:

- The Second Optional Protocol to the International Covenant on Civil and Political Rights
- Protocol No. 6 to the European Convention on Human Rights

The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

Another previous attempt includes the UN High Commissioner for Human Rights' facilitation of discussion panels on increasing transparency and changing the attitudes of death penalty supporters. Secretary General Ban Ki Moon coordinated film screenings on capital punishment and panel discussions with civil rights advocates to

- Discuss a transparency framework that would gradually encourage the dismantlement of capital punishment.
- Commission on Human Rights Resolution 1999/61 April 1999.

This resolution was approved after merging the International Covenant on Civil and Human Rights and Convention on the Rights of a Child. Overall, this resolution aims to reduce the number of executed prisoners and eradicates executing minors under 18 years old.

## POSSIBLE SOLUTIONS

The death penalty currently, under international law, is prohibited; however, it isn't legally binding. Laws that are legally binding are enforced and have to be followed by member nations. However, when a law is non-legally binding, it is encouraged that countries follow the law; it is not compulsory to do it. This makes non-legally binding laws very ineffective, as there is no incentive, such as avoiding sanctions, for countries. Therefore, one possible solution is to propose and implement an international law which is legally binding so that countries actually abide by it. Another alternative to the death penalty includes modifying legislature to allow a parole process or depend on life sentences. In addition, all states should publicly announce the number of death penalties that take place annually to allow the public to see the figures. Sanctions may also be an efficient method to place on countries who chose to ignore the law.

A more short-term solution to the problem would be to immediately implement more humane killing methods such as using lethal injections, as they are known to be the most painless and effective method. This should also include the banning of hanging, as it is easy to botch and therefore cause immense pain and also the banning of firing squads, as the same fate as hanging happens. In addition to this, all countries who are yet to ban the death penalty should adopt legislations that only

allow execution on the most serious crimes, such as war crimes or treason, in order to avoid any unfair or discriminatory prosecutions, such as homosexual acts. It should also be strictly enforced that anyone under 18, mentally handicapped or pregnant women may not be executed. Everyone should have the right to a fair trial before an execution takes place including the presence of valid evidence to avoid the prosecution of an innocent person and the administration of a lawyer.

In order to discourage criminal behavior on death row prisoners it should also be taken into account that psychological studies have been proven effective ways that when prisoners follow a form of therapy it ultimately decreases their chances of re-offending as well as providing educational programs and workshops as they tend to yield similar results as therapy.

The death penalty should also be discussed prominently in schools from both MEDC's and LEDC's this will help educate the children on the issue to make the abuse of human rights a more well-known issue. Informative campaigns through the media will also help raise awareness of the issue. The public should be addressed which are the capital offences and how to refrain from committing such acts.

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