



INTS200 Model UN: MiniMUN Background Information and Briefing Paper

Third Committee of the General Assembly Social, Humanitarian and Cultural Affairs

Topic: Eradicating the Death Penalty and the Right to Life

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This document provides a range of background information for the miniMUN in week 7. It provides:

- Background information on the General Assembly Committees and the Third Committee in particular as it debates issues relating to the death penalty;
- Background information on the death penalty;
- An example position paper for Australia; and
- A draft resolution to be debated.

Background Information

Role of the General Assembly's Committees

The main committees of the General Assembly (GA) function as advisory committees to the plenary. In other words, each of the six main committees of the GA is tasked with formulating draft resolutions and reporting on key issues within their portfolio to the plenary.

For the purposes of this MUN, we will draft and vote on a resolution ourselves. The GA usually operates in a declaratory manner. It declares standards and best practices. It does not sanction or create peacekeeping and enforcement missions.

The Third Committee

The Third Committee of the General Assembly (3GA or SOCHUM) has a very broad mandate within the United Nations (UN) structure. It was created after the conclusion of the *Universal Declaration of Human Rights* (1948) and is responsible for debate and deliberations on all matters, which broadly speaking, fall into the categories of social, cultural and humanitarian affairs.



Topics that fall into this category include: the rights of indigenous peoples, women, disabled persons and sexual minorities. It considers issues of human rights and social justice. A principal area of consideration for 3GA is reports from the Human Rights Council which was created in 2006. Increasingly, it is considering topics related to drug control, criminal justice and terrorism.

Key collaborating bodies for SOCHUM are the Department of Political Affairs, United Nations Children's Fund, United Nations Development Fund for Women, United Nations Development Programme and the United Nations Office of the High Commissioner for Refugees among others.

The current chair of 3GA is His Excellency Mr Einar Gunnarsson of Iceland at its 72nd session of sitting.

The Death Penalty

This topic comes under discussion at irregular intervals in SOCHUM in particular if there has been progress in abolition or worsening situations such as the restoration of executions in Indonesia in 2014 or the recent increases in executions in Iraq, Egypt and Bangladesh. Statistics for 2016 compiled Amnesty International reported that there were 1,032 judicially ordered executions. This was a 37 per cent decline on the number of executions recorded in 2015, when Amnesty recorded the highest number of executions in a single year since 1989. This figure do not include the many thousands of people executed annually in China, indeed it is believed to be the world's top executioner. It also does not include extra-judicial executions, or unconfirmed reports of executions (Amnesty, 2017).

The former UN Secretary-General, Ban Ki-moon, said that the "death penalty has no place in the 21st Century" (UN News 2014).



"Capital punishment is the most premeditated of murders, to which no criminal's deed, however calculated, can be compared."

Albert Camus, "Reflections on the Guillotine," *Resistance, Rebellion and Death* (1961).

Image: "Albert Camus " by Photograph by United Press International, via Wikimedia PD

Law

Article 6 of the *International Covenant on Civil and Political Rights* (1966) remains one of the primary legal regulations on the death penalty. As of March 2018 there were 170 parties to the ICCPR. It stipulates:

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.



2. 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.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Since the conclusion of the ICCPR a *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty* was concluded in 1989, which calls upon all states to abolish the death penalty, and work towards its eradication. As of March 2018, 84 state parties to this optional protocol.

Multilateral treaties such as the ICCPR are only binding upon states if they have ratified the treaty. The ratification process is twofold. Initially, the state must become a signatory to the treaty. Then the state must implement the relevant provisions of their treaty into their domestic law. Once both of these steps have taken place, the treaty becomes binding upon the state. The state's success in meeting these treaty obligations is subject to the Universal Periodic Review Process of the United Nations Human Rights Council.

Additionally, the Economic and Social Council has passed a resolution (UN Doc E/RES/1984/50) calling for safeguards which should be put in place to protect those who are currently awaiting execution on death row.

Statistics

According to Amnesty International's statistics on the death penalty, by the end of 2016, 104 states were abolitionist for all crimes - in 2016, Benin and Nauru became abolitionist for all crimes and Guinea abolished the death penalty for ordinary crimes.



Amnesty International Data on Retentionist and Abolitionist Countries 2016

Abolitionist for ordinary crimes only (only apply the death penalty for exceptional crimes like treason and military offences)	Brazil, Chile, El Salvador, Guinea, Israel, Kazakstan, Peru
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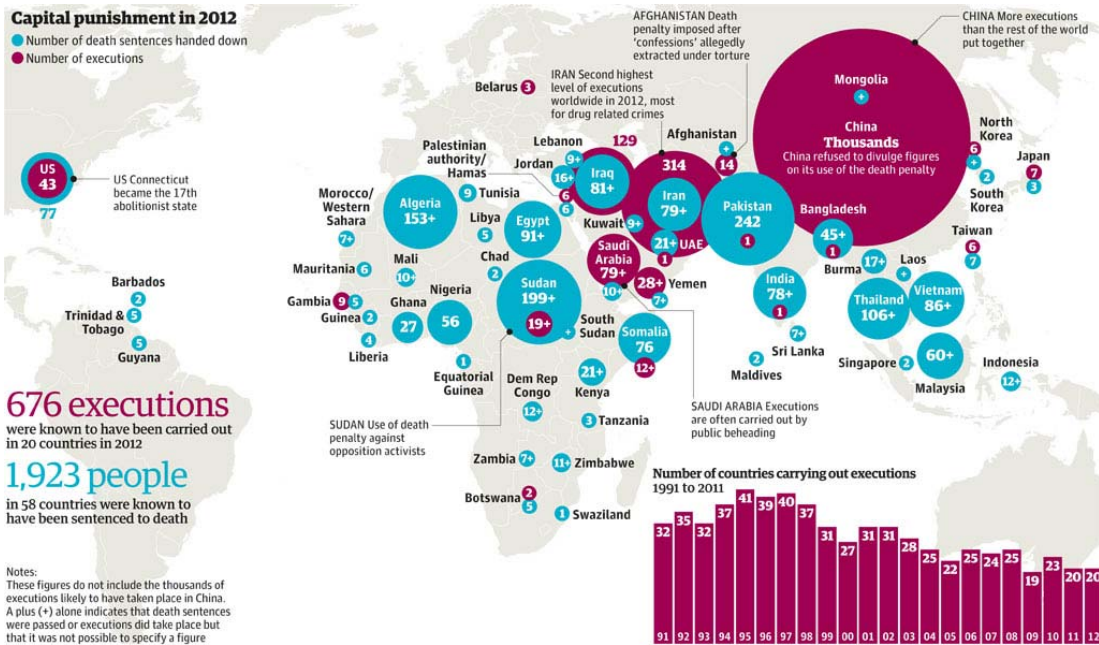
Abolitionist in practice (have not executed anyone for ten years)	Algeria, Brunei Darussalam, Burkina Faso, Cameroon, Central African Republic, Eritrea, Ghana, Grenada, Kenya, Laos, Liberia, Malawi, Maldives, Mali, Mauritania, Morocco, Myanmar, Niger, Papua New Guinea, Russian Federation, Sierra Leone, South Korea, Sri Lanka, Swaziland, Tajikistan, Tanzania, Tonga, Tunisia, Zambia Note: the Russian Federation introduced a moratorium on executions in August 1996. However, executions were carried out between 1996 and 1999 in the Chechen Republic.
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Retentionist Countries	Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of the Congo, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, North Korea, Oman, Pakistan, Palestinian Authority, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Taiwan, Thailand, Trinidad And Tobago, Uganda, United Arab Emirates, United States Of America, Viet Nam, Yemen, Zimbabwe
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Source: Amnesty International

In 2016, 23 countries were reported as having judicially order executions. As noted above, China does not publish statistics regarding the number of executions. However, Amnesty estimates that it is in the thousands and Cornell University’s research centre ‘Death Penalty Worldwide’ has estimated at least 3,000 executions annually since 2011, where it was reduced down from an estimate of 5,000.

Discounting the numbers of executions in China, almost 90 per cent of the remainder of executions took place in Iran, Saudi Arabia, Iraq and Pakistan. At least 18,848 people were on death row at the end of 2015.



Case Studies

Europe

Europe has a long history of opposition to the death penalty. In 1985, *Protocol 6* to the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (Treaty 114) abolished the use of the death penalty in all times of peace. In 2018, of the 47 member states, 46 five have ratified the Protocol and Russia has signed it without proceeding to ratification. In 2003, *Protocol 13* was adopted which abolished the use of the death penalty in all instances. In 2018, the Protocol had been ratified by 44 states and a further one is a signatories, but they have not proceeded to ratification. Two states have not signed it - Russia and Azerbaijan. In fact, the European Court of Human Rights has held that the Eurozone has become substantively capital punishment free (*Ocalan v Turkey* 2005).

Since 2013, abolition of the death penalty has been considered a precondition for entry to the European Union (EU). The EU frequently makes representations to the UN, other regional bodies and states arguing for clemency for those on death row. The EU has been a strong supporter of abolitionist resolutions within the UN.

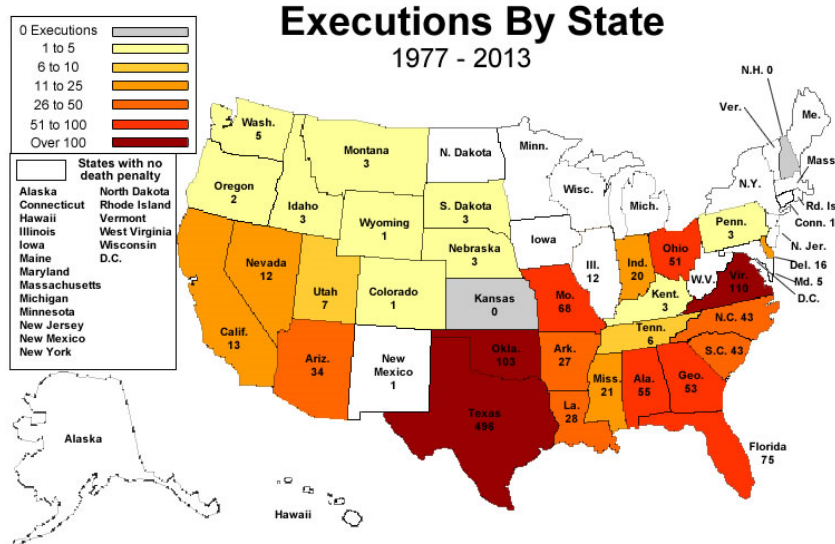
America

Since 1976, the USA has executed 1,471 people (Death Penalty Information Centre 2018). As of late 2016, there were 31 states that had retained the death penalty and 19 that had abolished it. The overwhelming majority of executions occur within the southern states and use the lethal injection method.

In July 2014, a landmark ruling from the Californian District Court ruled that the death penalty was unconstitutional, as practised within that state (Dolan & Kim 2014). This was followed by a similar decision in the state of Delaware in 2016 making it the 19th abolitionist state. Four other states currently have



gubernatorial moratoriums on the death penalty. The death penalty has been on the decline in the US but botched executions and flawed evidence and proceedings continue to punctuate cases.



Source: Death Penalty Information Centre

Indonesia

Former President Susilo Bambang Yudhoyono had effectively a moratorium on executions for most of his term in office. However, after Joko Widodo took office in October 2014 they resumed. After no executions in 2014, there 14 in 2015 though just four in 2016 and one in 2017.

Two Australians were executed in Indonesia in in April 2015, Andrew Chan and Myuran Sukumaran. Like most provinces in Indonesia, they used the firing squad. There are still around 134 persons facing the death penalty in the country and the number of people sentence to death increased in 2016. Yet late in 2016, Joko Widodo indicated he was rethinking the death penalty and may even move to abolition. Further, Jakarta has long devoted considerable resources to prevent the execution of Indonesian citizens overseas.



Objectives of the 3GA Meeting

As with any committee working with a human rights issue, the objectives are similar and twofold:

- 1) Restate the international law on the issue (in this case, reaffirm a prohibition on the death penalty);
and
- 2) Recognising that the death penalty is still in use, ensure that states are limiting their use of it and that there are safeguards in place to prevent arbitrariness and unduly cruel treatment.

Potential things to considering within a resolution are:

- 1) The method of execution;
- 2) The amount of notice that is given to the individual and their family of the date of execution;
- 3) Guarantees that prisoners on death row will not be discriminated against because of their status;
- 4) Due process and guarantees of a fair trial which hands down the death penalty;
- 5) Limitation of the death penalty to the most serious crimes;
- 6) The legal and political issues of executing a foreign national; and
- 7) The need to urge de facto abolitionist states to become abolitionist in law.



Resources

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- Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty*, signed 28 April 1983, ETS 114, (entered into force 1 March 1985) <http://conventions.coe.int/Treaty/en/Treaties/Html/114.htm>
- Safeguards guaranteeing protection of the rights of those facing the death penalty*, ESC Res 1984/50, UN ESCOR, Supp No 1, UN Doc E/1984/84 (adopted 25th May 1984) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DeathPenalty.aspx>
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- UN News Staff, 2014, 'Death penalty has no place in the 21st Century', declares UN chief', *UN News Centre*, United Nations, New York, USA, http://www.un.org/apps/news/story.asp?NewsID=48192#.VMtIV_mSzQe

Example Position Paper

Eradicating the Death Penalty and the Right to Life

Attention: Third Committee of the General Assembly Social, Humanitarian and Cultural Affairs

From: The Commonwealth of Australia

Date: March 2018

Background

The Commonwealth of Australia is a Constitutional Monarchy and received independent legal sovereignty from the United Kingdom of Great Britain and Northern Ireland in 1901. Australia has a federalised jurisdiction and criminal law is a concurrent power of both the Federal Government (Australian government) and the governments of the respective states.

Issues

Australia has ratified both the *International Covenant on Civil and Political Rights* (ICCPR) and the *Second Optional Protocol* regarding the death penalty. Australia was one of the first parties to ratify the *Second Optional Protocol*, doing so in 1990 prior to it becoming enforceable in 1991. Australia was for many years an annual co-sponsor of the resolution passed through the Human Rights Council (and previously Human Rights Commission) each year, which called for the eradication of the death penalty. Australia has also been a co-sponsor of resolutions in the General Assembly that call for a Moratorium on the use of the death penalty (last Resolution 71/187 2016).

Australia strongly affirms its international commitments through state practice. The last judicially ordered executed carried out in Australia was in 1967, in the state of Victoria. The death penalty was formally abolished in all states and territories by 1985, with the state of Queensland abolishing it in 1922. Under the federalised government system, a law of a state cannot contradict a law of the Commonwealth.

Consequently, the *Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010* (Cth) prohibited the reintroduction of the death penalty in all Australian jurisdictions.

There are around a dozen Australians on death row around the world. Australia strongly but unsuccessfully appealed for clemency for two members of the “Bali Nine Drug Ring”, Andrew Chan and Myuran Sukumaran, who were executed in Indonesia in April 2015. After the executions a parliamentary inquiry was launched resulting in a report entitled, *A World Without the Death Penalty*. The report made 13 recommendations including calls to review extradition law and Australian Federal Police guidelines to limit the risk of death sentences abroad for Australian nationals. The government has yet to respond to the report.

Australia has consistently and uniformly placed pressure on other member states of the United Nations (UN) who are threatening to execute Australian citizens. While respecting the sovereign right to self-determination of all UN member states, Australia strongly affirms the need to apply the principles of the ICCPR. Australia supports any action from the UN which works towards the eradication of the death penalty (*ex post facto*) in all member states. Australia calls upon members of this committee to also support a strong resolution calling for the death penalty's eradication.

Acknowledging the difficulties in this position, Australia also calls upon member states to support an indefinite moratorium on judicial executions. This moratorium would prevent those currently on death row from being executed.

Australia looks forward to working with the member states of this committee to ensure that the crucial right to life is universally respected.

Notes on Australia's Position – not for inclusion in official statement

A World Without the Death Penalty made 13 detailed recommendations including calls to review extradition law and Australian Federal Police guidelines to limit the risk of death sentences abroad for Australian nationals. The report also recommended the development of a whole-of-government strategy for abolition. The government is yet to respond to the inquiry. It is refusing to agree to review extradition law.

Australia will propose the eradication of particular forms of the death penalty, namely beheading and stoning. Australia will also work towards the removal of the death penalty for the crimes of adultery, homosexuality and forms of blasphemy and sedition. Australia's view is firmly that the death penalty, if implemented, should be reserved for the most serious crimes such as murder, rape and torture. It should especially not be used upon persons who are particularly vulnerable and already marginalised minorities within their communities.

References

Amnesty International (2014). *Death Sentences and Executions 2013*, Amnesty International Publications, London <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>

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Draft Resolution Third Committee of the General Assembly

1/1. A moratorium on all judicially ordered executions.

Welcoming past resolutions of this General Assembly including A/RES/62/149, A/RES/62/149, A/RES/63/168, A/RES/65/206 and A/RES/67/176 and A/RES/71/187

Recalling and further welcoming diplomatic efforts working against the death penalty,

Noting the previous work of this committee and the Human Rights Council holding states to account on their records regarding the death penalty,

Acknowledging the operative provisions of the *Second Optional Protocol to the International Covenant on Civil and Political Rights*,

1. *Demands* that all states cease to execute any prisoners currently facing execution;
2. *Requests* all states to ratify the *International Covenant on Civil and Political Rights* and the *Second Optional Protocol* thereto;
3. *Invites* all states to develop a legislative plan and framework to abolish the death penalty for all crimes that do not include murder, rape, torture, treason, or violations of religious or culturally specific law, as appropriate.
4. *Calls upon*, all states to report on this legislative plan in the next year of sittings of this committee, and in their Universal Periodic Reviews at the Human Rights Council.

1st plenary meeting
April 2018