

Human Rights Council

Topic C: The Issue of the Death Penalty

“Everyone has the right to life, liberty and the security of person”

Article 3, Universal Declaration of Human Rights

The topic of the use of the death penalty, either as a result of the judicial process or arbitrary executions, has been discussed within the United Nations system under the framework of the discussion on human rights for many years. While the Secretariat of the United Nations has repeatedly condemned the use of the death penalty in any circumstance and the majority of Member States have abolished the use of the death penalty, the death penalty continues to be used in some countries, and has been addressed every year at the Human Rights Council. While progress has been rather limited, the international community has witnessed more states abolishing and moving towards abolishing the use of the death penalty every year.

Background

The first time that the topic of the death penalty was brought up in the United Nations came from the Sub-commission on the Prevention of Discrimination and the Protection of Minorities under the subject of forced disappearances and executions. Once the sub-commission began work on tracking instances of forced disappearance and executions, the sub-commission found that these incidents were reported in growing numbers every year. This alarming trend eventually led the Commission on Human Rights, the precursor body to the Human Rights Council, to pass resolution 1982/29 of 11 March 1982, which asked the Economic and Social Council to appoint a special rapporteur to investigate the instances of the use of the death penalty and make annual reports to the Commission on Human Rights to allow for the body to take further action on the issue in light of better evidence and understanding on the issue.

Special Rapporteur on Extrajudicial, Summary or Arbitrary executions

After operating as a fact finding entity for several years, the position of special rapporteur was eventually expanded to the position of the Special Rapporteur on extrajudicial, summary or arbitrary executions through resolution 1992/72 of the Commission on Human Rights. This significant change in title also meant that the Commission had adopted a larger set of criteria to count as the use of the death penalty, as opposed to just forced disappearances, and now incorporated and violations of the right to life as guaranteed through numerous international human rights instruments as well as various international treaties. The special Rapporteur also received a new mandate through the Commission on Human Rights' resolution 1996/74, which empowered the Rapporteur to visit nations to ensure compliance with established Human Rights agreements pertaining to the use of the death penalty, make recommendations to Member States to ensure the provision of Human Rights in cases regarding the death penalty, engage in dialogue with governments of visited countries to monitor progress in achieving compliance with established human rights standards, and to pay special attention to extrajudicial, summary or arbitrary executions of children and women and to allegations concerning violations of the right to life in the context of violence against participants in demonstrations and other peaceful public

manifestations or against persons belonging to minorities. The Rapporteur maintained the duty of preparing annual reports based on the most current activities regarding the use of the death penalty and continues to report to the Human Rights Council following the dissolution of the Commission of Human Rights.

International Human Rights Treaties

While the actors that monitor the use of the death penalty and compliance with international human rights treaties, it is vital to be familiar with the treaties that espouse the right to life and the use of the death penalty.

One of the first United Nations documents that espoused the right to life was the Universal Declaration of Human Rights. While the right to life is mentioned in article three, it was not put into the context of the use of the death penalty. Nonetheless, the Universal Declaration stands as the foundation for all other human rights conventions. One of the next major documents that addressed the use of the death penalty was the *International Covenant on Civil and Political Rights (ICCPR)*. In Article Six, the ICCPR reaffirmed the inherent right to life of every human being and encouraged all Member States to abolish the death penalty. The ICCPR additionally calls for the death penalty to not be carried out against anyone under the age of 18, and on pregnant women. However, the ICCPR did allow for the death sentence to be carried out only in instances of serious crimes and when decided upon by a competent court in a country that had not previously abolished the death penalty.

Another document that deals specifically with the use of the death penalty is the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*. In no uncertain terms, the *Second Optional Protocol* states in its first article that no one within the jurisdiction of a Member State that has agreed to the protocol will be executed and that all states that have agreed to the Protocol will take all necessary measures to abolish the death penalty. While this wording seems very similar to the original ICCPR, the fundamental difference is that the ICCPR still allowed for countries have use the death penalty to use it for instances of serious crimes. The Protocol differs in the fact that it does not make such a provision.

A final document that addresses the death penalty is the Convention on the Rights of the Child. In article 6, the Convention outlines every child's right to life and subsequent discussion on the Convention have led states to move to abolish the use of the death penalty against children. Furthermore, in article one, the Convention establishes the age of a child to be any person under the age of 18, unless individual state law sets a younger age for a child to become an adult. A fact that may come as a surprise to some is that since 1990, Amnesty international, a non-governmental organization, recorded over 46 executions of persons under the age of 18 in eight different countries, those being the Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, the USA, China and Yemen. However, since 1990, Yemen, Zimbabwe, China and Pakistan have all acceded to the Convention on the rights of the child and set the minimum age of execution to 18.

Current Situation

An integral aspect to addressing the most recent issues with the death penalty is achieving familiarity with the terms associated with the death penalty. For most documents that address the death penalty, states are classified as completely abolitionist, abolitionist for ordinary crimes, de facto abolitionists, or retentionist. Completely abolitionist countries are those that have abolished the use of the death penalty for all crimes, both in peacetime and wartime. Abolitionist countries refers to those countries that have abolished the death penalty for any crime committed during peacetime, yet still retain the right to execute those that commit exceptional circumstances that apply during times of war or against the state such as treason or armed insurrection. Countries that still retain the right to use the death penalty, but have not executed anyone within the past ten years are defined as de facto abolitionist. The last classification of retentionist refers to those states that still use the death penalty and have executed a person within the past ten years.

Safeguards for the use of the death penalty

While the majority of international community stands against the use of the death penalty, those states that have not yet acceded to the relevant convention are still within their legal rights to use the death penalty without violating international law. However, the Special Rapporteur on extrajudicial, summary or arbitrary executions sought to establish minimum guidelines for the use of the death penalty to ensure that those facing the death penalty are still being afforded their fundamental human rights. To this end the Rapporteur in cooperation with the Commission on Human Rights set up eight guidelines for the use of the death penalty which stated that: capital punishment may be imposed only for the most serious crimes; the incarcerated have the right to benefit from a lighter penalty if provisions to state law exist; persons below 18 years of age at the time they committed the crime should not be sentenced to death and the death sentence should not be carried out on pregnant women, new mothers, or persons who have become insane; capital punishment may be imposed only when guilt is based upon clear and convincing evidence leaving no room for an alternative explanation of facts; the death sentence may be carried out only pursuant to a final judgment rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial, including the right of a defendant to adequate legal assistance; the right to appeal against the death sentence to a court of higher jurisdiction must be granted; the right to seek pardon or commutation of sentence must be granted; capital punishment shall not be carried out pending any appeal or other recourse procedure; and when capital punishment occurs, it shall be carried out so as to inflict minimum suffering. While these guidelines have been established, they have not been agreed upon in any international convention and have no strong authority.

Transparency in the use of the death penalty

During the course of researching the use of the death penalty, the Special Rapporteur noted that the use of the death penalty, including the statistics as to the number of executions, the number of the incarcerated on death row, and information being provided to the families of those on death row, was often shrouded in secrecy. This secrecy was directly in violation of the ICCPR

and the Universal declaration of Human Rights, which outline that everyone has the right for criminal charges against him or her to be adjudicated in the view of public.

In order to rectify this apparent violation of human rights, the Special Rapporteur outlined two specific areas that needed to be addressed in order to maintain human rights. The first was the full disclosure of information to the public relating to the use of the penalty including: the number of persons sentenced to death; the number of executions actually carried out; the number of death sentences reversed or commuted on appeal; the number of instances in which clemency has been granted; the number of persons remaining under sentence of death; and each of the above broken down according to the offence for which the condemned person was convicted. The second recommended action from the Rapporteur is the timely and reliable provision of information to the condemned persons, their families and the lawyers of the condemned regarding information on the procedures and timing of appeals, clemency petitions, and executions.

Future Outlook

While the use of the death penalty has been declining in previous years across the globe, any use of the death penalty still goes against the fundamental tenants that the United Nations holds in the highest regard. As delegates research the topic, it is important to remember that universal adherence to relevant international treaties serves as the foundation to a world free from the use of the death penalty. However, while there are still nations that retain the right to use the death penalty, the Human Rights Council must take action based on the recommendations of the Special Rapporteur to establish standards and norms in the use of the death penalty to ensure that fundamental human rights are upheld.

Focus Questions

1. Does your country retain the right to utilize the death penalty? If so, does it use it during peacetime, or solely for war crimes?
2. Has your country signed and ratified the ICCPR, the second protocol to the ICCPR or the Convention on the Rights of the Child? If not, what reservations does your country have to these treaties?
3. Has the Special Rapporteur on extrajudicial, summary or arbitrary executions ever visited your country? If so, what recommendations has the Rapporteur made to your government? Has your government enacted these recommendations?
4. Has your country ever received criticism for not being transparent in the use of the death penalty?
5. What action would your country recommend that the Human Rights Council take to encourage states to abide by the recommendations of the Special Rapporteur concerning safeguards in the use of the death penalty and transparency?

Sources

Documents

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