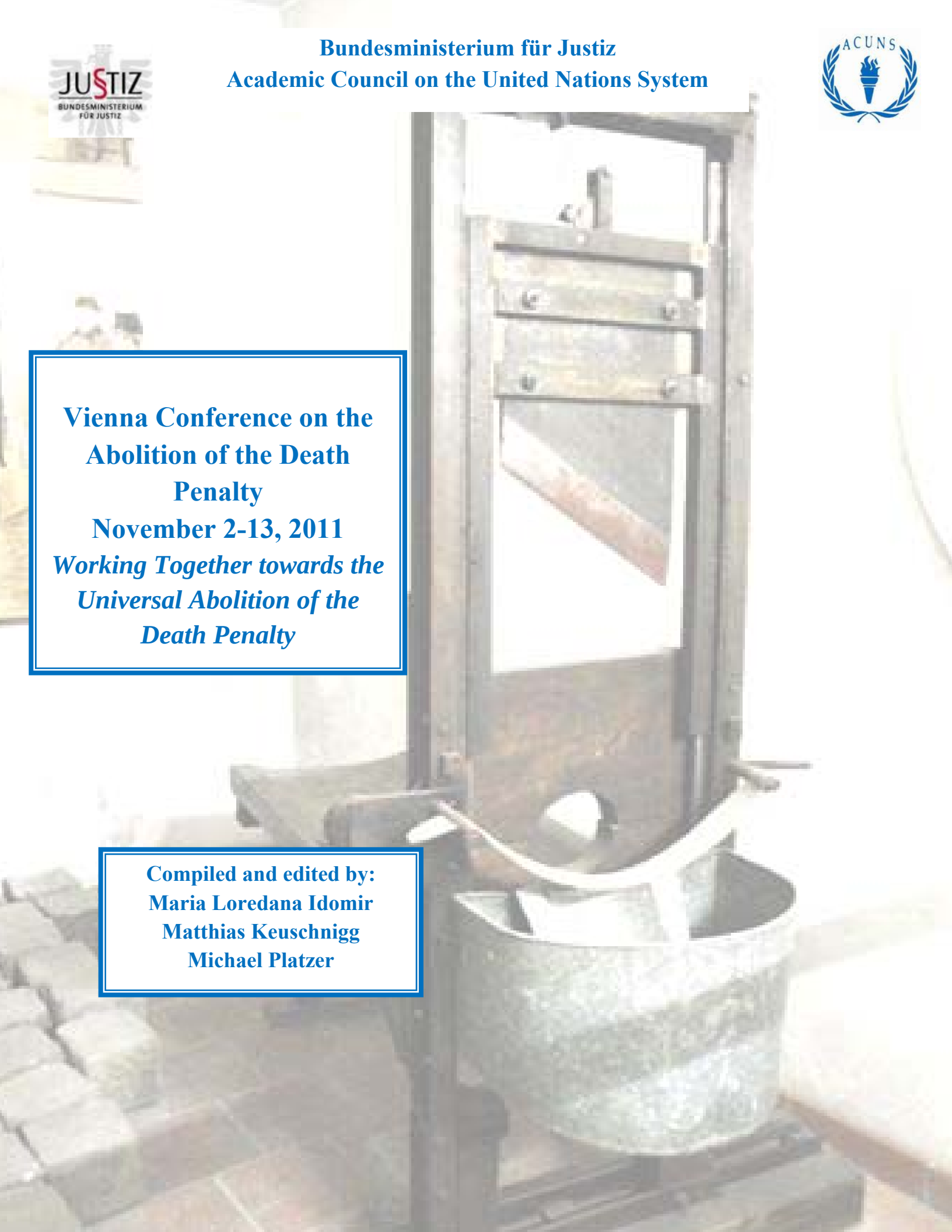
Bundesministerium für Justiz
Academic Council on the United Nations System



Vienna Conference on the Abolition of the Death Penalty

November 2-13, 2011

Working Together towards the Universal Abolition of the Death Penalty

Compiled and edited by:
Maria Loredana Idomir
Matthias Keuschnigg
Michael Platzer

Vorwort


Foto: Jungwirth

Sehr geehrte Damen und Herren!

„Death is not justice“ lautete eine Kampagne des Europarats gegen die Todesstrafe. Die Todesstrafe schafft aber nicht bloß keine Gerechtigkeit, sie ist die Negation von Gerechtigkeit, ein fundamentaler Angriff auf zwei tragende Säulen unseres Gemeinwesens: das Recht auf Leben und die Achtung der Würde des Menschen.

In Österreich wurde die Todesstrafe 1950 im ordentlichen Verfahren und 1968 im standgerichtlichen Verfahren abgeschafft.

Der Europarat kann sich als „todesstrafenfreie Zone“ mit 800 Millionen Menschen bezeichnen. In allen 47 Mitgliedstaaten ist die Todesstrafe entweder abgeschafft oder wird zumindest nicht praktiziert. Das auf österreichische Initiative zurückgehende 6. Zusatzprotokoll zur Menschenrechtskonvention zur Abschaffung der Todesstrafe in Friedenszeiten aus dem Jahr 1983 wurde von allen Mitgliedstaaten unterzeichnet und bis auf einen auch von allen Mitgliedstaaten ratifiziert. Das 13. Zusatzprotokoll aus dem Jahr 2002, das auch die Abschaffung der Todesstrafe in Kriegszeiten vorsieht, wurde von 43 Mitgliedstaaten ratifiziert und von 2 weiteren unterzeichnet. Österreich war jeweils unter den Erstunterzeichnerstaaten.

In Österreich verlief die Entwicklung zur Abschaffung der Todesstrafe keineswegs linear, beim Europarat gibt es einen Beitrittskandidaten und Länder mit Beobachtungsstatus, die die Todesstrafe noch kennen, und weltweit lebt laut amnesty international immer noch zwei Drittel der Menschheit in Staaten mit Todesstrafe – mag sich auch die überwiegende Mehrzahl der tatsächlich praktizierten Hinrichtungen auf eine Handvoll Staaten konzentrieren.

Gerade im menschenrechtlichen Bereich besteht die Verlockung, einmal Erreichtes als selbstverständlich anzusehen, eben weil es sich um fundamentale Werte und Rechte handelt. In Wahrheit bedarf es jedoch auch hier steter Wachsamkeit, um Erreichtes zu bewahren, und entschiedenen Eintretens für jene, die dieser Rechte noch nicht teilhaftig sind.

In diesem Sinne bin ich fest überzeugt davon, dass die Bedeutung des Symposiums zur internationalen Ächtung der Todesstrafe nicht hoch genug veranschlagt werden kann.

Beatrix Karl

Dr. Beatrix Karl
Justizministerin

Table of Contents

Einführung Symposium zur internationalen Ächtung der Todesstrafe

Mag. Friedrich Forsthuber[1]

Als Präsident des Landesgerichtes für Strafsachen Wien war es mir auch ein persönliches Anliegen, an der Organisation eines Symposiums zur internationalen Ächtung der Todesstrafe mitzuwirken. Die in dieser Publikation nachzulesenden Vorträge, die Vorführung des berührenden Filmes „Still Killing" und die abschließende Podiumsdiskussion hochkarätiger internationaler Experten fanden am 8.und 9.11.2011 im Festsaal des Obersten Gerichtshofes sowie im Großen Schwurgerichtssaal des Landesgerichtes für Strafsachen Wien statt.

Im Landesgericht für Strafsachen Wien wurden von 1938 bis 1945 fast 1200 Menschen von der NS-Unrechtsjustiz durch das Fallbeil hingerichtet (daran erinnert noch heute die „Weihestätte"). Letztmalig wurde eine von österreichischen Gerichten verhängte Todesstrafe am 24.3.1950 am Raubmörder Johann Trnka vollstreckt; im selben Jahr wurde sie im ordentlichen Verfahren abgeschafft. Am 7.2.1968 beschloss der Nationalrat einstimmig, auch die Möglichkeit zur Schaffung von Standgerichten oder anderen Formen einer Ausnahmegerichtsbarkeit aus der Verfassung zu streichen. Artikel 85 B-VG lautet seither: „Die Todesstrafe ist abgeschafft."

Die aktuelle Entwicklung gibt trotz der zahlreichen auch im 21.Jahrhundert noch weltweit vollstreckten Todesurteile doch berechtigten Anlass zu einem optimistischen Ausblick. Die hochkarätigen Experten des Symposiums vertraten einhellig die Ansicht, dass eine weltweite Ächtung der Todesstrafe bis zum Jahr 2030 erreicht sein könnte. Hatten im Jahre 1948 nur acht Länder der Erde bereits die Todesstrafe abgeschafft, halten wir heute bei etwa 140, in denen diese zumindest nicht mehr vollstreckt wird. Geht man davon aus, dass durchschnittlich drei weitere Länder pro Jahr hinzukommen und damit auch der internationale Druck auf die verbleibenden Außenseiter immer größer wird, stellt die umfassende Ächtung der staatlichen Tötung von Menschen in den nächsten 20 Jahren keine Utopie mehr dar. Allerdings mussten auch die Optimisten eingestehen, dass die Abschaffung der Todesstrafe in einigen Staaten (etwa im Iran oder Saudiarabien) nur im Falle eines Regimewechsels zu erwarten ist. Verwiesen wurde auch auf die sehr unterschiedlichen Beweggründe, die die verbliebenen Befürworter für die Anwendung der Todesstrafe ins Treffen führen.

Während in einigen Ländern auch religiöse Gründe eine Rolle spielen, steht für die Bundesstaaten der USA, die die Todesstrafe mehrheitlich noch anwenden, der Sühnegedanken (va als „Ausgleich" für Angehörige von Mordopfern) im Vordergrund. Die chinesische Führung vertritt hingegen (zumindest inoffiziell) die Ansicht, vor allem zur effektiven Korruptionsbekämpfung aus generalpräventiven Erwägungen auf die Todesstrafe nicht verzichten zu können.

[1] Mag. Friedrich Forsthuber ist der Präsident von Landesgericht für Strafsachen Wien

In den letzten fünfzig Jahren haben unzählige wissenschaftliche Untersuchungen belegt, dass die Todesstrafe während ihrer geschichtlichen Anwendung keineswegs abschreckende Wirkung erzielt, sondern vielmehr zur Verrohung der Gesellschaft und dort, wo sie politisch, ideologisch oder religiös motiviert war, zur Schaffung von Märtyrern und Verhärtung der Fronten beigetragen hat.

Die fortschreitende internationale Ächtung der Todesstrafe wurde auch dadurch unterstrichen, dass der Europarat den Verzicht auf deren Anwendung als Beitrittsvoraussetzung normiert hat. Weißrussland, das als einziges europäisches Land an der Todesstrafe festhält, ist daher auch aus diesem Grund kein Mitglied. Sämtliche internationale Gerichtshöfe - vor allem der ständige Internationale Strafgerichtshof (für das ehemalige Jugoslawien) in Den Haag, das Internationale Tribunal für Ruanda in Arusha sowie der ECCC zur Ahndung der Verbrechen der Roten Khmer in Kambodscha - haben die Anwendung der Todesstrafe selbst für Völkermord ausdrücklich ausschlossen.

Obgleich es also noch erheblicher Überzeugungsarbeit bedarf, teile ich im Lichte dieser positiven Entwicklungen die Hoffnung der Experten und NGOs, dass die weltweite Ächtung der Todesstrafe noch zu unseren Lebzeiten erzielt werden könnte und deren Anwendung eines Tages für die zivilisierte Menschheit ebenso unvorstellbar anmuten wird wie Folter und Sklaverei.

Summary

1200 persons were executed during Nazi regime in his court. Despite the reality that capital punishment is still carried out in Byelorussia, Iran, Saudi Arabia, USA and China, they have become “outliers”. Whereas in 1948, only eight states had abolished the death penalty, today 150 have stopped executions. He is therefore optimistic and that within our lifetimes, capital punishment will be seen as unacceptable as torture and slavery.

The Vienna Conference on the Abolition of the Death Penalty
Overview of the proceedings

Dr. Michael Platzer

Horrible images of people hanged on cranes in public executions and women being stoned to death remain with us for a long time. Hopefully, they will incite us to action, at the very least to join an Amnesty International campaign.
However, those who are condemned to life imprisonment are often no better off - they are isolated, denied the normal prison programmes, allowed little human contact, and can become suicidal if there is no prospect of release.

Our Conference on the abolition of the death penalty, held in Vienna, was a resounding success. It lasted three days (7-9 November 2011), beginning in the Ceremonial Hall of the Judicial Palace (Justiz Palast) with statements about how capital punishment was ended in Europe and continuing with an international discussion on the second day in the Grand Jury Court Room (Grosser Schwurgerichtssaal) on *Completing the Task: towards the Universal Abolition of the Death Penalty*. The prize-winning film, *Thou Shalt not Kill* by Christoph Kieslowski, which contributed to ending state executions in Poland, was screened at the end of the proceedings.

The participants also saw in a special exhibition of the Eichmann trial (with audio recordings of contemporary witnesses, the judges, the lawyers, and even Eichmann himself), went to the Museum of Gestapo Headquarters and the Archives of the Resistance, listened to music in the High Court, viewed the special exhibit *Art and Justice* in Vienna's Regional Court for Criminal Cases and visited the execution chambers where people were decapitated until 1950. For participants, it was very moving to see a photographic exhibition of the young people, students, union organizers, even a Catholic nun, in the actual room where they were executed. The exhibition, organized by the Soziale Gerichtshilfe, showed that their lives were ended in 90 seconds tempo by a specially constructed modern Nazi guillotine, when their only crime was to make critical remarks about Hitler's regime.

New knowledge from the Conference

A great deal of new and interesting information was revealed at the Conference about the abolition of the death penalty in Austria in the 19th century, its reinstatement in the 20th century, and about the growing abolitionist movement in Europe and worldwide. What seemed impossible 20 or 40 years ago is now an abolitionist's dream almost come true.

The papers collected in this volume are a valuable historical record, and also provide a strategy for the way forward, including strengthening the humanist principles of criminal policy.

As we now have effectively banned execution, we must consider those left on death row and humane alternatives to capital punishment.

There is thus much to do - in countries that have indeterminate sentences (UK), preventive detention (Germany), lengthy sentences without parole (USA), harsh punishment without consideration of mental health or socio-economic neglect, disproportionate laws, lengthy pre-trial detentions or inhumane prison conditions.

Surviving under stressful inhumane conditions without hope of release can amount to torture. From this perspective, improvement to laws and prison practice is needed in all countries; but we now have a historical opportunity to assist the North African and Central Asian states in abolishing the death penalty, introducing fair, proportionate alternative sanctions, and providing humane prison conditions.

We were indeed fortunate to have academics from China, Ireland and Spain with us at the Conference, who spoke about the need to challenge the arguments of retribution, prevention (the death penalty does not reduce violent crime), economic cost (executions cost more than life imprisonment), and invocation of the rights of victims (which must be balanced).

Public opinion, too, is important, as Heping Dang, stresses in her article in this publication. Public execution and "reality" television shows which violate the inherent dignity of the condemned should be forbidden. The fairness argument, namely, that the death penalty is used for poor people who do not have the legal resources as well as the possible innocence of those who have paid the ultimate price - and indeed there have been many mistakes - can be persuasive with some members of the public.

Empathizing with the condemned on the basis that they are human beings like us, with families, misfortunes, dreams and hopes, who may have made one horrible mistake in their lives but have shown remorse is another avenue. The fact that in almost all religions God is merciful and that in the Koran the death penalty is mandatory for only a few crimes is another argument. Practical measures that actually help the victim's family in concrete may, in fact, bring about "closure" faster.

In some states which are repressive and use the death penalty as a way to control dissidents, efforts must concentrate on organizing and mobilizing pressure groups within the country and by the international community. Dictators cannot say "the public wants it" when polls indicate the contrary. In many countries, the abolition of the death penalty will come with justice and penal reform and the strengthening the humanist principles of criminal policy. In the end, it is a matter of respect for human rights.

As several writers in this volume have pointed out, the modern abolitionist movement began with the Italian jurist Casare Beccaria, whose ideas were incorporated into the Austrian Penal Code in 1788. Unfortunately, during periods of dictatorship the death penalty returned, as Winfried Garscha and Harald Seyrl have made clear. The historic site, in which this conference was held, houses both elements: the Grand Jury Room of the Enlightment and the execution chamber of the Nazis. Both sides of the story must be continually kept in mind.

The United Nations General Assembly has called for a moratorium on executions (2010) and that the laws and practice at least fully comply with UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty. We were indeed fortunate to have had William Schabas who prepared the annual UN report on the death penalty, will be traveling to Iran, and has had extensive experience in teaching this topic in China. The Arab Spring has opened new opportunities in formerly retentionist countries.

This conference was a link in a chain of events occurring around the world, but was also based on previous work being done by the International Commission against the Death Penalty, the Academic Network against the Death Penalty, and Penal Reform International.

The London Conference, "Progressing toward abolition of the death penalty and alternative sanctions that respect human rights standards"

The Conference "Progressing toward abolition of the death penalty and alternative sanctions that respect human rights standards", held on 19-20 September at the European Commission's Representative Office in London was an important event, organized by Penal Reform International. I was able to attend this conference, and we are including the recommendations of the London Declaration (*Progressing toward abolition of the death penalty and alternative sanctions that respect international human rights standards*) as an annex to these proceedings. Our combined report in turn will be presented to 21th session of the United Nations Commission on Crime Prevention and Criminal Justice in April of this year and to the Office of the High Commissioner for Human Rights to maintain international attention on this issue.

In addition to calling on states that have a de facto moratorium on the death penalty to commute sentences for prisoners on death row, the London Declaration calls for alternative sanctions that are fair, proportionate, and provide adequate accommodation, food, water, medical and psychiatric care, education, employment, fresh air, visitation, and access to religion.

The Declaration also asks for mindfulness of the family members of those who are executed or sitting on death row - who are often forgotten, marginalized or stigmatized by society.

The Fourth World Congress against the Death Penalty, Geneva.

In February 2010, the Fourth World Congress against the Death Penalty took place in Geneva. As a follow-up, a documentary was made from the testimonies given by academics, lawyers, and even a condemned person. This film *Still Killing* was shown twice during the conference followed by a discussion with the filmmakers, Adan Nieto, Manuel Maroto Calatayud, and Marta Muñoz de Morales Romero. We were very pleased to have our Spanish friends, including the Secretary General of the International Commission against the Death Penalty, Asunta Vivó Cavaller, with us at the Vienna Conference and will co-ordinate our work more closely with their efforts in the future. We were honored by the participation of representatives from the United Nations Office on Drugs and Crimes and the United Nations High Commissioner for Human Rights Office. As mentioned above, the next opportunity at which the Death Penalty will be discussed is the 20th session of the United Nations Commission on Crime Prevention and Criminal Justice, from 23-27 April in Vienna.

We hope that this booklet will be a useful impetus in moving forward the deliberations in that body and around the world.

Organization and sponsorship of the Vienna Conference

The Vienna conference was organized under the auspices of the Ministry of Justice and the Vienna Regional Court for Criminal Cases, by the Academic Council on the United Nations System (ACUNS) and Academics for the Abolition of the Death Penalty.

The organizers were joined by the International Commission against the Death Penalty, the Austrian Commission of Jurists, Soziale Gerichtshilfe, the Boltzman Institute for Human Rights, the University of Vienna, Austrian Research Centre for Post War Trials, the Criminal Museum of Vienna, the Diplomatic Academy of Vienna, the Irish Centre for Human Rights, the Polish Institute, Das Iranische Wien, the Islamic Community of Austria, and Amnesty International.

We were honored by the presence of senior officials from the UN Office of the High Commissioner for Human Rights from Geneva and the United Nations Office on Drugs and Crime in Vienna, as well as judges, lawyers, NGO representatives, students, relatives of people who have been executed, and individuals concerned about the continuing use of the death penalty.

Dr. Michael Platzer[2]

[2] Dr. Michael Platzer is the Representative of the Vienna Academic Council on the United Nations Liaison Office and a former United Nations official

The International Commission against Death Penalty
- Vision, mission, action -

On behalf of its members:

Federico Mayor (Spain), Acting President of ICDP, former Director General of the UNESCO and former Minister of Education and Science of Spain

Giuliano Amato (Italy), former Prime Minister of Italy

Louise Arbour (Canada), former UN High Commissioner for Human Rights and former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda and currently President and CEO of the International Crisis Group

Robert Badinter (France), former Minister of Justice of France

Mohammed Bedjaoui (Algeria), former Foreign Minister of Algeria, Former Judge in the International Court of Justice

Ruth Dreifuss (Switzerland), former President and Minister of Home Affairs of the Swiss Confederation

Michèle Duvivier Pierre-Louis (Haiti), former Prime Minister of Haiti

Asma Jilani Jahangir (Pakistan), President of the Human Rights Commission of Pakistan

Ioanna Kuçuradi (Turkey), UNESCO Chairperson of the Philosophy and Human Rights Department and Director of the Center of Research and Implementation of Human Rights in Maltepe University (Turkey) and President of the Philosophical Society of Turkey;

Gloria Macapagal-Arroyo (Philippines), former President of the Philippines

Rodolfo Mattarollo (Argentina), former Deputy Secretary for Human Rights in Argentina

Ibrahim Najjar (Lebanon), former Minister of Justice of Lebanon

Bill Richardson (USA), former Governor of New Mexico.

The International Commission against the Death Penalty (ICDP) welcomes the commitment and contribution of the Austrian government to initiatives to abolish the death penalty. There is a clear global trend away from capital punishment as evidenced by international and regional standards and UN General Assembly resolutions calling for a moratorium on the use of the death penalty as a step towards abolition. More than two thirds of all states have now abolished the death penalty in law or practice.

The International Commission against the Death Penalty (ICDP) was founded in Madrid in October 2010. ICDP opposes the death penalty under any circumstances believing that it violates the right to life enshrined in the Universal Declaration of Human Rights. ICDP also recalls that there exists no evidence which confirms the deterrent effect of the death penalty.

ICDP promotes the abolition of capital punishment in law in those states that observe a de facto moratorium on the use of the death penalty and promotes moratoriums on executions in states that rarely use the death penalty. In states that continue to carry out executions ICDP urges strict adherence to international standards. ICDP works with the United Nations and other international and regional organizations, governments and non-governmental organizations to further the abolition of capital punishment worldwide.

ICDP is composed of 13 personalities of high international standing from all regions of the world who act with total independence and neutrality and work under President Federico Mayor. The work of the ICDP is supported by a diverse group of 15 states from all regions of the world that are committed to the abolition of the death penalty[3]. Switzerland currently holds the Presidency of the Support Group which will pass to Norway in October this year. There is a small Secretariat in Geneva which is responsible for organizing the work of the ICDP.

Since its creation in 2010 the ICDP has undertaken a number of activities aimed at abolishing capital punishment and promoting respect for international safeguards for those facing the death penalty. In 2011 ICDP undertook a mission to Tajikistan to participate in an international conference "Central Asia without the Death Penalty" and to meet with those involved with the issue. Later that year ICDP participated in a regional conference in Kigali, Rwanda, on the need to abolish the death penalty on the continent of Africa. A conference on the "Death Penalty in the Greater Caribbean" took place in Madrid bringing together abolitionist from the region to review future directions on abolishing capital punishment. A decision was taken to establish a first Caribbean Network against the Death Penalty.

As a new international organization specifically dedicated to abolishing the death penalty ICDP also met with the UN High Commissioner for Human Rights to inform the High Commissioner of ICDP's work and explore opportunities for future cooperation. Similarly

[3] Algeria, Argentine, Dominican Republic, France, Italy, Kazakhstan, Mexico, Mongolia, Norway, Philippines, Portugal, South Africa, Spain, Switzerland, Togo and Turkey.

meetings took place with the Council of Europe, the European Union and the African Commission on Human and Peoples' Rights.

ICDP has welcomed a number of positive developments including Benin and Kyrgystan's ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and Mongolia's intention to ratify that same Protocol. The increased support in the UN General Assembly for the third resolution on a Moratorium on the use of the death penalty further reinforced the global trend towards abolition. At the country level Cuba released the remaining prisoners on death row, the state of Illinois (USA) abolished the death penalty and in September 2011 South Korea passed its 5,000 day without executions. Africa continues to show positive developments towards the abolition of the death penalty. At least 36 states are abolitionist in law or practice with only a few countries still carrying out executions. A debate is also underway about the drafting of a protocol, similar to those in Europe and the Americas, which would abolish the death penalty.

But some countries increased their use of the death penalty and ICDP made a number of interventions and statements on these countries. In 2011 Iran increased its use of the death penalty with the majority of executions for drug related offenses. Iran is also one of a small number of states that persists in executing juveniles, including Alireza Molla-Soltani in September 2011. In Iraq there was a dramatic increase in executions in the first few months of 2012 which matched the number of executions during the whole of 2011. Belarus executed two prisoners and remains the only European country to implement the death penalty in what is otherwise a region free of executions. In Georgia, USA, Troy Davis was executed despite an international campaign to save him from the death penalty and persistent doubts about his guilt.

China continues to carry out a large number of executions although the exact number is shrouded in state secrecy. But over the past decade the government has become more open to a constructive dialogue on the use of capital punishment including greater respect for international standards leading to stricter controls on executions, and the eventual abolition of the death penalty. If this dynamic continues the outcome is likely to be a significant decline in the number of executions.

For the coming year ICDP is particularly focused on opportunities to abolish the death penalty in Algeria, Morocco and Tunisia. ICDP plans to undertake a number of activities including meetings with government, parliamentarians, and representatives of civil society opposed to the death penalty.

In April 2012 ICDP will undertake a mission to California to meet with state officials and participate in events on the abolition of the death penalty. There have been no executions in California since 2006 after a District Judge halted executions on grounds of flaws in the state's execution process. Opponents of the death penalty have collected more than 800,000 signatures

in an initiative (the SAFE California Act) which will put abolition of the death penalty to a public vote on 6 November 2012.

The use of capital punishment in Japan also continues to be a matter of serious concern. ICDP will participate in a number of seminars and meetings to further the debate on the death penalty and urge the government of Japan to introduce an official moratorium on executions with a view to its eventual abolition.

ICDP is also actively engaged in discussions for the Fifth World Congress against the Death Penalty to be held in Madrid in 2013. The Congress, which takes place every three years, brings together abolitionist groups. As well as considering the death penalty in specific situations, such as the Arab Spring, it is an opportunity to look at challenges, share information and develop common strategies for global abolition. A preparatory meeting for the Congress will take place in Morocco in October 2012.

Zusammenfassung

Die Gründung der Internationalen Kommission gegen die Todesstrafe (ICDP) am 7. Oktober 2010 war eine Folge der spanischen Initiative, der weltweiten Abschaffung der Todesstrafe neuen Schwung zu verleihen. Dies geschah in der Absicht, Aktivitäten, die die weltweite Abschaffung der Todesstrafe anstreben, zu bewerben, ergänzen und zu unterstützen.

Die ICDP setzt sich aus verschiedensten Persönlichkeiten zusammen, welche, die Menschenrechte betreffend, alle internationale Anerkennung genießen. Dank dem Ansehen der Mitglieder und der regional ausgewogenen Zusammensetzung, wird die Kommission auch auf internationaler Ebene in hohem Maße wahrgenommen. Sie agiert mit voller Unabhängigkeit und bemüht sich um das höchste Maß an Neutralität.

Die Grundsätze des Komitees sind:

- Das Vorantreiben der offiziellen Abschaffung der Todesstrafe. Das ICDP will die Todesstrafe aus den verschiedenen Rechtsordnungen verbannen, was speziell Staaten betrifft, welche die Todesstrafe de facto nicht mehr vollziehen.
- Das Erreichen eines weltweiten Moratoriums. Das ICDP arbeitet darauf hin, eine möglichst breitenwirksame und effektive Durchsetzung einer globalen Aussetzung des Vollzugs der Todesstrafe zu erreichen, hat dabei aber die grundsätzliche Abschaffung im Auge.
- Der Aufruf zum Aufschub von Hinrichtungen wider geltendes Völkerrecht. Das ICDP fordert die Aufschiebung von Hinrichtungen in Fällen, in welchen das Völkerrecht den

Vollzug beschränkt. Besonders wenn gefährdete gesellschaftliche Gruppen betroffen sind (jugendliche Straftäter, Schwangere, Geistesschwache bzw. Geisteskranke).

Das ICDP verfolgt diese Grundsätze auf eine strategische und gezielte Weise und betreibt besonders folgende Tätigkeiten mit Nachdruck:

- Zusammenarbeit mit hohen Vertretern und Persönlichkeiten verschiedener Staaten und fallweise auch Intervention bei diesen. Parallel dazu die Zusammenarbeit mit regionalen Organisationen und Vertretern der Zivilgesellschaft.
- Aufrufe und Berichte zu Fragen die Abschaffung der Todesstrafe betreffend.
- Teilnahme an Konferenzen und Seminaren, wie auch bei Kampagnen zur Mobilisierung der öffentlichen Meinung.
- Weitergabe von Information und die Präsentation von Arbeiten bei internationalen Diskussionsforen.
- Bewerben von intellektuellen und künstlerischen Arbeiten zugunsten der Abschaffung der Todesstrafe.

Die Arbeit des ICDP wird von einer geographisch zerstreuten Gruppe von Staaten unterstützt und finanziert, die sich für dies Sache auf globaler und lokaler Ebene einsetzen. Diese Gruppe setzt sich aus folgenden Ländern zusammen: Algerien, Argentinien, Dominikanische Republik, Frankreich, Italien, Kasachstan, Mexiko, Mongolei, Philippinen, Portugal, Südafrika, Spanien, Schweiz, Togo und der Türkei. Die Koordination der Gruppe wird durch ein jährlich wechselndes, dem Rotationsprinzip folgendem, Präsidium garantiert. Der erste Präsidialstaat war Spanien 2011, gefolgt von der Schweiz, die bis Oktober 2012 die Präsidentschaft inne hat.

Das Sekretariat ist für die Organisation der Arbeit der ICDP verantwortlich und gibt dieser Kontinuität. Weiter koordiniert es die Tätigkeiten der Unterstützergruppe und erhält Informationen die Frage der Todesstrafe betreffend.

I. Death penalty worldwide, in Europe and Austria

Die Ächtung der Todesstrafe aus Sicht des internationalen Rechts

Prof. Frank Höpfel[4]

Für die Bemühungen um die Ächtung der Todesstrafe stehen primär die Menschenrechtsübereinkommen – einerseits auf Ebene der Vereinten Nationen, andererseits auf der des Europarates, dessen Rolle als Motor der Entwicklung von Roland Miklau eingehend gewürdigt wird. Im Weltpakt über bürgerliche und politische Rechte sprechen schon die Bestimmungen des Artikels 6 jene Dynamik der Evolution an, die dann mit dem Zweiten Fakultativprotokoll von 1989 Wirklichkeit wurde. Die Präambel zu diesem Fakultativprotokoll spricht vom „Vertrauen darauf, dass die Abschaffung der Todesstrafe zur Förderung der Menschenwürde und zur fortschreitenden Entwicklung der Menschenrechte beiträgt" und greift damit jene Überzeugung auf, die die menschenrechtliche Sicht auf unser Thema prägt. Sie hat das Selbstverständnis Europas so entscheidend geprägt, dass heute der Beitritt nicht nur zur Menschenrechtskonvention, sondern auch zu ihren Zusatzprotokollen Nr. 6 und 13 Voraussetzung für eine Mitgliedschaft im Europarat sind. Dazu muss nichts mehr gesagt werden. Vielmehr geht es mir um den besonderen Bezugspunkt, den das moderne *Völkerstrafrecht* beisteuert: Denn die Position Europas wurde auch im Strafrecht selbst zu einer bestimmenden Größe in den Verhandlungen, als sich nach dem Ende des West-Ost-Konflikts anbot, dass man an diesem Rechtsgebiet weiterbaute.

Das Völkerstrafrecht wurzelt bekanntlich in dem Modell des Internationalen Militärtribunals von Nürnberg von 1945 (IMT). Das IMT trug neben der Allgemeinen Erklärung der Menschenrechte und der Völkermordkonvention von 1948 wesentlich zur Entwicklung der Menschenrechte bei, keines dieser Instrumente sagte aber selbst etwas zum Thema Todesstrafe. Als man das Modell des IMT als erstes Beispiel internationaler Strafjustiz im Jahr 1993 im Sicherheitsrat der Vereinten Nationen aufgriff und das Jugoslawien-Kriegsverbrechertribunal (ICTY), also eine Einrichtung zur Wahrung der *europäischen* Hygiene, ins Leben rief, war das Statut des IMT aber nicht in jeder Hinsicht Vorbild. Vielmehr gab es – das betone ich jedes Mal, wenn die geschichtliche Entwicklung des internationalen Strafrechts zur Diskussion steht – von vornherein, und jenseits aller Detailfragen der Prozessgestaltung, zwei ganz wesentliche Abweichungen: Zum einen wollte man keine Todesstrafe mehr, und zum anderen richtete man eine Berufungskammer ein und gelangte so zu sehr viel ausführlicheren Entscheidungen und einer als semi-wissenschaftlich zu bezeichnenden Form der Wahrheitsfindung. Auch wo die Wahrheitsfindung aber noch so sehr abgesichert ist: die Grundproblematik der Todesstrafe bleibt so massiv, so eindeutig im Raum, dass man diese Komponente der Nürnberger Prozesse keinesfalls übernehmen wollte. Vielmehr war in der Zwischenzeit die Evolution der Grundrechte

[4] Prof. Frank Höpfel was an Ad Litem Judge at the International Criminal Tribunal for Former Yugoslavia and teaches at the University of Vienna

gerade in Europa so rasant weitergegangen – deshalb habe ich darauf eingangs Bezug genommen und verweise hier auf alles, was Miklau dargelegt hat –, dass für die Todesstrafe aus der Sicht der Mitgliedstaaten des Europarates schlicht kein Raum war. Die anfängliche Bestrebung der USA, in seltener Einmütigkeit mit einflussreichen Moslemstaaten, der Todesstrafe doch eine Tür offenzulassen (nach „*imprisonment*“ sollte nach dem Wunsch dieser Staaten eingefügt werden: „*or other appropriate sanctions*“), konnte abgewendet und das Ziel erreicht werden, dass der Sicherheitsrat den modernen Weg einer internationalen Strafjustiz festschrieb und vor allem der von manchen gewünschten Möglichkeit der Todesstrafe mit dem lakonischen Satz in Artikel 24 des Statuts einen Riegel vorschob: *„The penalty imposed by the Trial Chamber shall be limited to imprisonment.“* Denselben Weg ging man ein Jahr später bei der Schaffung des Ruanda-Tribunals, 2002 bei der Schaffung des Spezialgerichtshof für Sierra Leone und im Weiteren bei allen anderen Einrichtungen der Strafjustiz in ihrer internationalen oder doch hybriden („internationalisierten“) Form. Im Zentrum steht heute das Römische Statut über den permanenten Internationalen Strafgerichtshof von 1998 (ICC). Die bekannte reservierte Haltung der Vereinigten Staaten und anderer großer Staaten dürfte inzwischen nur noch zu einem geringen Teil die (fehlende) Todesstrafe betreffen. Freilich lässt sich in der Aburteilung eines Saddam Hussein im nationalen Rahmen (im Falle des Iraqi High Court lässt sich nicht von einem internationalen Gericht sprechen) ein Relikt der Todesstrafenideologie erblicken.

Diese steht für totalitäre Systeme und hat in einem demokratischen Rechtsdenken nichts mehr zu suchen. Im Völkerstrafrecht – das solches demokratisches Rechtsdenken widerspiegelt – wurde denn auch nie mehr ernsthaft erwogen, die Todesstrafe zu erlauben. Dies ist ein wertvoller Impuls für die nationalen Gesetzgeber, zumal es sich bei den Verbrechen, für die diese internationalen Gerichte zuständig sind, um die schwerstwiegenden Verletzungen der Menschenrechte handelt. Es genügt nicht, dass die individuelle Verantwortlichkeit für solche Menschenrechtsverletzungen prozessual in einer Weise geprüft wird, die selbst den zu schützenden Standards entspricht hier steht an der Spitze die richterliche Unabhängigkeit. Vielmehr spiegelt sich auch in der Sanktionsfrage spiegelt sich dieses Ziel wieder, einem hohen Menschenrechtsstandard zu entsprechen, selbst wenn dann die Eingriffe milder erscheinen als manchen der Länder, in denen die Taten verübt wurden und in denen vergleichsweise minder schwere Verbrechen abzuurteilen sind.

Das hat unter Umständen auch Deeskalation in nationalen Strafrechtsordnungen zur Folge. Als Beispiel für eine solche Kettenreaktion ist Ruanda anzuführen, wo es schließlich auch innerstaatlich zur Abschaffung der Todesstrafe gekommen ist. Dazu kommen weitere Auswirkungen, die von der internationalen Dimension auf die Diskussion ausgehen. Die Thematik der Exekution jugendlicher Täter in den USA zeigt dies etwa. Nicht nur der schon zitierte Weltpakt, sondern auch die Kinderrechtekonvention berührt ja das Thema in Gestalt des Verbots der Exekution Jugendlicher. An dieser Stelle gibt es Hoffnung, dass sich die lange Zeit sehr starr anmutende Ablehnung internationaler Maßstäbe als unmittelbar beachtliche Normen in den USA aufzuweichen beginnt.

Ein anderer Punkt einer solchen möglichen Einwirkung hat sich jüngst in einem

Verfahren gezeigt, in dem eine österreichische Staatsanwaltschaft (konkret: die StA Innsbruck) Bezug genommen hat auf das Tötungsverbot in Österreich, das Beachtung auch dort verdiene, wo es um die Mitwirkung an einer Exekution in den USA durch Herstellung und Lieferung von Chemikalien oder Vorläufersubstanzen solcher Chemikalien ging, welche bei Exekutionen Verwendung fänden. Man hat in diesem Fall erwogen, es aber unterlassen, ein Strafverfahren wegen Mordes durchzuführen. Dennoch war man sich der ethischen Problematik bewusst und sah in dem Widerspruch zu der Wertung des Europarates (13. Zusatzprotokoll wie oben angeführt) geradezu einen Verstoß gegen den Ordre public. Zwar wäre der rechtliche Ansatz zu einer solchen Verfolgung wegen Mordes aus der österreichischen Grundregel der Einheitstäterschaft heraus argumentierbar (die Strafbarkeit der Beihilfe hängt nicht von der Rechtswidrigkeit der Tat, zu der beigetragen wird, ab); dieser Standpunkt dürfte aber doch größere Widerstände hervorrufen. Weil gerade in den USA die Rechtmäßigkeit einer Exekution nach traditioneller Auffassung sich auf die Beurteilung von Beitragshandlungen auch in anderen Staaten innerhalb und außerhalb der USA auswirkt, stehen wir vor einem Verständigungsproblem. Zumal es dazu bisher wenig an öffentlicher Diskussion gegeben hat, ist ein politischer Vorstoß einem rein rechtlichen vorzuziehen. Die ausstehende Debatte erscheint mir notwendig und sollte von einem gesamteuropäischen Standpunkt aus geführt werden.

Summary

Prof. Höpfel emphasizes the rapid expansion of fundamental human rights in Europa so that capital punishment no longer has a place.

He begins with the International Military Tribunal of Nurnberg. The focus at present lies on the Rome Statute of the International Court of Justice which disallows capital punishment even for mass murderers. Thus great progress has been achieved with exceptions in authoritarian states and the execution of Saddam Hussein . The consensus is that in a democratic state such a punishment has no place anymore.

The norms prescribed in international criminal law translate into national legislation and obligations as well. Prof. Höpfel gives three instances of such positive developments: Rwanda (the death penalty is now abolished in the entire country), U.S. (direct application of international conventions protecting the rights of children against the execution), and Austria (the case of a firm in Innsbruck that was close to being charged with complicity to murder for exporting chemicals used for the executions in the U.S.).

Die Ächtung der Todesstrafe in Europa

Dr. Roland Miklau[5]

1. Vom 18. ins 20. Jahrhundert

Die Geschichte der Ächtung der Todesstrafe in Europa auf der völkerrechtlichen Ebene ist kaum mehr als 30 Jahre alt. Die Bemühungen zur Abschaffung dieser Strafe auf der nationalen Ebene sind in etlichen Staaten aber mehr als zwei Jahrhunderte alt. Sie hatten freilich ein sehr wechselvolles Schicksal.

Typischerweise gelang und gelingt der Verzicht auf diese "ultimative" Sanktion nicht auf einen Schlag, sondern in mehreren Schritten, auch im Wege der Abschaffung, Wiedereinführung und neuerlichen Abschaffung, oft in Form eines schrittweisen Verzichts auf Hinrichtungen ohne Entfernung der Todesstrafe aus dem Gesetzbuch. Man unterscheidet daher zwischen einer De-facto- und einer De-jure-Abschaffung. Ein faktisches oder auch offiziell erklärtes Moratorium kann ein Zwischenschritt auf dem Weg der Abolition sein.

In der Geschichte ging es fast immer zunächst (nur) um die Abschaffung im ordentlichen Strafverfahren, also um die Androhung und Anwendung der Todesstrafe bei Mord und anderen sehr schweren Straftaten. Hingegen hat man die Androhung der Todesstrafe für außerordentliche Verhältnisse, insbesondere für Zeiten des Krieges oder einer Kriegsgefahr, zum Teil aber auch für den Fall innerer Unruhen, meist bis vor wenigen Jahren fast überall aufrecht erhalten. In Österreich standen die Bestimmungen über das "Standrecht" bis 1968 im Einklang mit der Verfassung in der Strafprozessordnung.

Häufig ist die Diskussion um die Todesstrafe mit ihrer Streichung durch den Gesetzgeber noch nicht zu Ende. Stimmen für und Diskussionen rund um die Möglichkeit ihrer Wiedereinführung gibt es oft auch danach. Insgesamt ist der Verzicht auf diese archaische Strafsanktion also zumeist eher ein dynamischer Prozess als ein Paukenschlag.

In Europa begann dieser Prozess im Zeitalter der Aufklärung, besonders mit dem berühmten Werk "Dei delitti e delle pene" (1764) von *Cesare Beccaria,* italienischer Jurist (und österreichischer Beamter) in Mailand. Zuvor schon hatte Zarin Elisabeth in Russland 20 Jahrelang keine Hinrichtungen zugelassen. *Beccaria* hat sich mit folgenden Worten gegen die Todesstrafe ausgesprochen: "Die Todesstrafe ist nicht notwendig, denn lebenslange Freiheitsstrafe erfüllt den Sicherungszweck ebenso gut, den Abschreckungszweck besser; sie ist folglich auch ungerecht, denn eine Strafe darf nicht härter sein als notwendig; sie ist überdies

[5] Dr. Roland Miklau is a member of the Austrian Commission of Jurists and former Director General, Austrian Ministry of Justice

schädlich, denn sie wirkt verrohend und mindert die Achtung vor dem Verbot: Du sollst nicht töten." In Österreich folgte Kaiser Joseph II dieser Auffassung, dessen Strafgesetz von 1787 keine Todesstrafe mehr vorsah. Mit dem Strafgesetz von 1803 wurde die Todesstrafe von Kaiser Franz II (I) jedoch wieder eingeführt. Bemerkenswert ist aber, dass der Kaiser in einem Hofkanzleidekret zugleich bestätigt hat, dass sich in der Zeit der Abschaffung "die Anzahl der Verbrechen nicht vermehret" habe. Er bestätigte damit praktisch die generalpräventive Entbehrlichkeit der Todesstrafe. In der ersten Hälfte des 19. Jahrhunderts gab es dann nicht viel Bewegung in dieser Frage.

Nach den revolutionären Ereignissen des Jahres 1848 kam es in der Frankfurter Nationalversammlung nach heftiger Debatte zu einer Mehrheit gegen die Todesstrafe, deren Abschaffung somit in den Grundrechtskatalog aufgenommen wurde (§ 139 der Frankfurter Reichsverfassung von 1849), der freilich nicht Gesetz geworden ist. Die liberalen Geister dieser Zeit gaben aber nicht auf. Einzelne deutsche Teilstaaten verzichteten auf die Todesstrafe. 1867 folgte Portugal, das als erster europäischer Staat die Todesstrafe dauerhaft abgeschafft hat (ein Jahrhundert Späterübrigens sogar die lebenslange Freiheitsstrafe). 1870 folgten die Niederlande. In Österreich blieben die Bemühungen der Abolitionisten zwar erfolglos, doch wurde vom Gnadenrecht des Kaisers immer regelmäßiger Gebrauch gemacht, sodass nach 1900 in der österreichischen Reichshälfte der Doppelmonarchie von einer De-facto-Abschaffung gesprochen werden kann – ganz im Gegensatz zum grausamen Wüten der österreichischen Militärjustiz während des Ersten Weltkriegs, die wahrscheinlich Zehntausenden das Leben kostete.

Im Jahre 1919 hat die konstituierende Nationalversammlung der Republik Österreich die Todesstrafe im ordentlichen Verfahren abgeschafft. 1920 wurde dieser Verzicht auf die Todesstrafe in die neue Bundesverfassung aufgenommen. Dagegen hat die Weimarer Republik die Todesstrafe in Deutschland beibehalten. 1933/34 führte der autoritäre Staat in Österreich die Todesstrafe wieder ein und machte vom Standrecht üblen Gebrauch. Das barbarische Wüten der nationalsozialistischen Kriegsjustiz in Mitteleuropa, die die Todesstrafe als Terrorinstrument einsetzte, war dann ohne Beispiel (allein im Landesgericht Wien wurden zwischen 1942 und 1945 über 1000 Hinrichtungen mit dem Fallbeil vorgenommen, die Hälfte davon aus politischen Gründen).

Bestrebungen zur Abschaffung der Todesstrafe gab es in Europa aber auch in dieser Zeit, die in den Dreißigerjahren in Skandinavien, 1942 in der Schweiz erfolgreich waren. Nach dem Zweiten Weltkrieg kam es sogar in der Sowjetunion unter Stalin für kurze Zeit zur Abschaffung der Todesstrafe. In Deutschland verzichtete das Bonner Grundgesetz von 1949 auf die Todesstrafe, in Österreich entschied sich das Parlament 1950 für die Abschaffung der Todesstrafe im ordentlichen Strafverfahren – wie erwähnt unter Aufrechterhaltung ihrer Androhung für außerordentliche Verhältnisse (Standrecht), gleichsam als "Reservestrafe". Die gesetzliche Streichung der Todesstrafe bedeutete oft nicht das Ende jeder Diskussion über sie – so kam es auch in Österreich nach 1950 gelegentlich zu Vorstößen in Richtung Wiedereinführung und

selbst nach 1968 im Zusammenhang mit Terroranschlägen und politisch motivierten Entführungen zu Diskussionen in dieser Richtung. Im Jahre 1968 war Österreich dann aber einer der ersten Staaten der Erde mit einem Totalverbot. Der (damals zur Opposition gehörende) langjährige Justizminister *Christian Broda* bezeichnete den Tag dieses einstimmigen Parlamentsbeschlusses als seinen wichtigsten Tag im Parlament.

2. Die österreichische Initiative im Europarat und das 6. Zusatzprotokoll zur Europäischen Menschenrechtskonvention

Broda war es dann, der als österreichischer Justizminister mit einem Referat bei der Konferenz von Amnesty International gegen die Todesstrafe (Stockholm, Dezember 1977) und danach offiziell bei der Konferenz der Justizminister des Europarates in Kopenhagen im Juni 1978 mit einem Memorandum die Frage der Todesstrafe zu einem völkerrechtlichen Anliegen und zu einem Diskussionsgegenstand auf der Ebene der Menschenrechte machte. Die Europäische Menschenrechtskonvention (EMRK), die im Artikel 2 das Recht auf Leben garantiert, enthielt (und die Stammkonvention enthält immer noch) eine Ausnahme zugunsten der Todesstrafe. Minister Broda argumentierte, dass diese Ausnahme im Widerspruch zu Artikel 3 EMRK stehe, der ein absolutes Verbot der Folter und jeder Form unmenschlicher oder erniedrigender Behandlung oder Strafe enthält. Er sprach von einer "Inkonsequenz und widersprüchlichen Unvollständigkeit" der Konvention. Man muss das damalige politische Umfeld im Auge behalten: Bis 1972 war in Griechenland das diktatorische Regime der Obristen an der Macht gewesen, bis 1975 gab es in Spanien die Franco-Diktatur; in Frankreich kam es noch zu Hinrichtungen; das Vereinigte Königreich hatte die Todesstrafe zwar 1964 abgeschafft, aber es gab periodisch Abstimmungen im britischen Unterhaus über die Frage der Wiedereinführung, vom Gebrauch der Todesstrafe im kommunistischen Osteuropa gar nicht zu reden.

Terroristische Straftaten in Deutschland, Italien und anderswo führten dann in den Siebzigerjahren zu einem Wiederaufflammen von Diskussionen, wobei man etwa an eine Art "Gegenerpressung" durch Androhung der Todesstrafe in Fällen terroristischen Entführungen dachte. Solche Gedanken verkennen freilich die Mentalität von Terroristen und stellen sich in gewissem Sinn auf dieselbe Stufe mit ihnen. In der Parlamentarischen Versammlung des Europarates gab es seit 1973 Diskussionen über einen Verzicht auf die Todesstrafe in den Mitgliedstaaten, die aber zu keinem Ergebnis führten.

Der österreichische Vorstoß in der Justizministerkonferenz 1978 wurde insbesondere von den Nordischen Staaten, Deutschland und Portugal unterstützt, worauf die Frage der Todesstrafe zunächst den Leitungskomitees für Strafrechtsfragen und für Menschenrechte zugewiesen wurde. Beide sprachen sich gegen die Todesstrafe aus. Im April 1980 hat sich auch die Parlamentarische Versammlung des Europarates mit großer Mehrheit zu einer eindeutigen Haltung entschieden, bezeichnete die Todesstrafe als unmenschlich, sprach sich für die Abschaffung in Friedenszeiten

aus und verlangte eine diesbezügliche Änderung oder Ergänzung der EMRK. Zu einer Meinungsbildung im gleichen Sinne kam es 1980 In der europäischen Justizministerkonferenz. Nach 1978 gab es in den damaligen (westeuropäischen) Mitgliedstaaten des Europarates keine Hinrichtungen mehr. Im Juni 1981 hat sich auch das Europaparlament der Europäischen Gemeinschaften erstmals deutlich diesen Stimmen angeschlossen. Nach der Wahl von Mitterand zum französischen Staatspräsidenten führte die Debatte in der Nationalversammlung im September 1981 zu dem historischen Beschluss, die Guillotine abzuschaffen. Justizminister *Robert Badinter* sagte in der Debatte, die Todesstrafe entspreche einem totalitären Konzept der Justiz; in der Demokratie dürfe niemand absolute Macht haben und über Leben und Tod entscheiden.

Das Ministerkomitee des Europarates als politisches Entscheidungsorgan erteilte sodann im Dezember 1982 den Auftrag zur Ausarbeitung eines Zusatzprotokolls zur Europäischen Menschenrechtskonvention. Im April 1983 beschloss es das 6. Zusatzprotokoll zur EMRK, dessen Art. 1 lautet: "Die Todesstrafe ist abgeschafft. Niemand darf zum Tod verurteilt oder hingerichtet werden." Art. 2 enthielt noch eine Ausnahme für Kriegszeiten oder Zeiten unmittelbarer Kriegsgefahr. Damit wurde das Recht, nicht der Todesstrafe unterworfen zu werden, zu einem subjektiven Recht im Völkerrecht, zu dessen Sicherung das Rechtsschutzinstrumentarium der Hauptkonvention zur Verfügung steht. Das danach am 1. Mai 1985 in Kraft getretene 6. Zusatzprotokoll war der weltweit erste völkerrechtlich bindende Vertrag über ein Verbot der Todesstrafe. Er wurde nach und nach von allen damaligen Mitgliedstaaten des Europarates ratifiziert, nach dem Fall der Berliner Mauer 1989 schrittweise auch von den beitretenden osteuropäischen Staaten. (Die DDR hatte auf die Todesstrafe schon 1987 verzichtet.) Heute haben 46 der 47 Mitgliedstaaten die Todesstrafe abgeschafft (einschließlich der Ukraine, Georgiens, Armeniens und Aserbeidschans). Russland hat das 6. ZP unterzeichnet, aber noch nicht ratifiziert; auch dort finden inzwischen keine Hinrichtungen mehr statt. Der einzige europäische Staat, in dem es heute noch Hinrichtungen gibt, ist Weißrussland (Belarus).

3. Die Ächtung der Todesstrafe – von einem Element europäischer Identität zu einem globalen Menschenrechtsstandard

Die Ächtung der Todesstrafe ist nach 1985 zum Bestandteil des gemeinsamen europäischen Menschenrechtsverständnisses und der europäischen Identität geworden. Seit 1994 haben der Europarat und die Europäische Union den Verzicht auf die Todesstrafe zur politischen und rechtlichen Vorbedingung für einen Beitritt als Mitgliedstaat gemacht. Das bedeutet ein sofortiges Hinrichtungs-Moratorium und – in absehbarer Zeit – die Ratifikation des 6. Zusatzprotokolls zur EMRK. Danach setzte eine Entwicklung zur Totalabschaffung der Todesstrafe ein. Es wurde ein weiteres, das 13. Zusatzprotokoll zur EMRK mit einer Verpflichtung zum Totalverbot ausgearbeitet, das am 1. Juli 2003 in Kraft getreten ist. Bis heute weist es 42 Ratifikationen auf, drei Mitgliedstaaten haben bisher nur unterzeichnet (darunter

Polen), zwei auch das noch nicht (Russland, Aserbeidschan). Die Ratifikation des 13. Zusatzprotokolls ist inzwischen ebenfalls Beitrittsbedingung zum Europarat und zur EU geworden.

Europa hat sich also innerhalb von 25 Jahren vom ersten erfolgreich gegen die Todesstrafe gerichteten Vorstoß (1978) bis zum Konsens über eine völkerrechtlich verbindliche Totalabschaffung (2003) weiterentwickelt. Die Europäische Union verfolgt auch in ihrer Außenpolitik eine entschiedene Anti-Todesstrafen-Linie. Die Abschaffung der Todesstrafe ist eines der Hauptziele ihrer gemeinsamen Menschenrechtspolitik. Das reicht vom Rechtsschutz für EU-Staatsbürger über Demarchen in Einzelfällen (etwa bei Verletzung von Mindeststandards) und gegebenenfalls eine Intervention als amicus curiae in den USA bis zur finanziellen Unterstützung einschlägiger Projekte. Der 10. Oktober wurde zum Tag gegen die Todesstrafe erklärt. Artikel 2 der EU-Grundrechtecharta enthält ein Totalverbot der Todesstrafe, Artikel 19 lautet darüber hinaus: "Niemand darf in einen Staat abgeschoben, ausgewiesen oder ausgeliefert werden, in dem das ernsthafte Risiko der Todesstrafe, der Folter oder einer anderen unmenschlichen oder erniedrigenden Behandlung besteht."

Auf der Ebene der Vereinten Nationen haben sich schon seit den Sechzigerjahren des vorigen Jahrhunderts Resolutionen der Generalversammlung für die schrittweise Zurückdrängung der Todesstrafe ausgesprochen. Deutschland hat 1980 eine Initiative ergriffen, die 1989 in das Zweite Fakultativprotokoll zum UN-Menschenrechtspakt über zivile und politische Rechte mündete (inhaltlich das Pendant zum 6. Zusatzprotokoll zur EMRK). Dieses Rechtsinstrument wurde bisher von 73 Staaten ratifiziert. Man kann heute von einem globalen Trend zur Abschaffung der Todesstrafe sprechen. Unter den Mitgliedstaaten der Vereinten Nationen haben heute 141 die Todesstrafe de jure oder de facto abgeschafft, das sind mehr als zwei Drittel der UN-Mitgliedstaaten. Sehr wichtig und bemerkenswert ist in diesem Zusammenhang ferner, dass weder die beiden vom Sicherheitsrat der Vereinten Nationen eingesetzten Internationalen Strafrechtstribunale für Ex-Jugoslawien und für Ruanda noch der mit dem Römer Statut von 1998 geschaffene Ständige Internationale Strafgerichtshof in Den Haag die Sanktion der Todesstrafe kennen.

Die Abschaffung, das Verbot der Todesstrafe ist – ausgehend von Europa - heute zu einem wichtigen globalen Standard des Strafrechts und der Menschenrechte geworden. Der weltweite Kampf gegen Folter und Hinrichtungen ist freilich noch lange nicht gewonnen.

Summary

The renunciation of the death penalty in Europe

The abolition of capital punishment is an issue since the age of enlightenment. In Europe, it was a long process with encouraging steps as well as setbacks.

In international law, abolition has a history of not more than 30 years. This development started with an Austrian initiative in the Council of Europe in 1978, which led to the adoption of the Sixth Additional Protocol to the European Human Rights Convention in 1983, the first binding international treaty against the death penalty. The Thirteenth Protocol later prohibited this sanction without any exception even for times of war. After the fall of the Berlin Wall in 1989 the rejection of the death penalty has become a central element of All-European identity and human rights policy.

At the level of the United Nations an Optional Protocol to the Covenant on Civil and Political Rights against the death penalty was adopted in 1989, establishing a global standard. Up to now, 141 Member states (more than two thirds) have abolished capital punishment in law or in practice. Despite still high numbers of executions in some countries, the process of restriction and abolition of the death penalty is ongoing worldwide.

Todesstrage in Österreich (1876-1950)

Harald Seyrl[6]

Als sich am Pfingstsonntag des Jahres 1868, es war der 30. Mai, unter dumpfem Trommelschlag ein langer Zug zur Spinnerin am Kreuz, der historischen Wiener Richtstätte, bewegte, sollte dies letzter Ausdruck mittelalterlich anmutende Justiz in Österreich sein.

Der Hinrichtung des Raubmörders Georg Ratkay, eines Tischlergesellen aus Ungarn, der am 11. Jänner 1868 seine Hausfrau Maria Henke ermordet hatte, war die letzte, in der Öffentlichkeit vollzogene Hinrichtung in Wien. Die Vorkommisse rund um diese zum Volksschauspiel gewordene Justifizierung – der Wiener Pöbel hatte fast die Richtstätte gestürmt, um Erinnerungsstücke zu erbeuten, und es war zu Exzessen beschämendster Art gekommen – waren Veranlassung, dass der österreichische Justizminister Glaser, über kaiserlichen Wunsch, auf den Vollzug der Todesstrafe ohne Zutritt der Öffentlichkeit drängte.

Dementsprechend wurde in die Strafprozessordung 1873 die Bestimmung aufgenommen, dass Hinrichtungen nur mehr innerhalb der Gefängnismauern vor der Gerichtskommission und achtbaren Zeugen vorzunehmen sind. War in jenen letzten Jahren der öffentlichen Hinrichtungen das Gerät des Vollzuges noch der Galgen nach dem „englischen System", meist „zweischläfrig", in Verwendung, so sollte mit dem neuen Standort des Vollzuges der Todesstrafe auch ein neues Gerät in Anwendung gebracht werden.

Am 16. Dezember 1876 sollte es so weit sein, die erste Hinrichtung nach den Veränderungen der Strafprozessordung 1873 wurde im landesgerichtlichen Gefangenenhaus in Wien vollzogen. Enrico Francesconi war es, des Raubmordes am Briefträger Guga für schuldig erkannt, der als erster am „Würgegalgen", auch Richtpfahl oder Richtpflock genannt, hingerichtet wurde. In einem schmalen Lichthof, des landesgerichtlichen Gefangenenhauses, dem Spitalshof, welcher später die Bezeichnung „Galgenhof" tragen sollte, was das Gerät aufgebaut. Ein einfacher Holzpfahl, etwas höher als der Delinquent groß war, ragte senkrecht aus der Pflasterung des Bodens. An der Rückseite durch eine dreistufige Treppe für den Scharfrichter betretbar, wies der Pfahl am obersten Ende eine nach innen gekrümmte Ringschraube auf, die zum Einhängen des Strickes vorgesehen war. Der Delinquent wurde an jedem Dezembertag des Jahres 1876 mit dem Rücken zum Richtpfahl gestellt, die Oberarme mit Riemen gebunden, ebenso wie die Beine im Bereich der Fußgelenke. Der Scharfrichter betrat die Treppe, beugte sich über den Pfahl und gab, nach Auftrag des Vorsitzenden des Gerichtshofes, seinen beiden Helfern Befehl, den Delinquenten hochzuheben. Nut wenige Zentimeter genügten, um den Scharfrichter Gelegenheit zu geben, einen vorbereiteten dünnen Strick in Form einer Schlaufe über den Kopf des

[6] Harald Seyrl ist Direktor von Kriminalmuseum Wien

Verurteilten zu ziehen, während das andere Ende des Strickes in die Ringschraube gehängt wurde. Unmittelbar danach zogen die Helfer des Scharfrichters ihr Opfer an Schultern oder Beinen nach unten, wobei meist auch der Scharfrichter durch Druck von oben diese Vorgangsweise unterstützte. Durch die gezielte Anlegung des sehr dünnen Strickes wurde nun die Blutzufuhr in das Gehirn des Gehenkten gesperrt, und der in wenigen Minuten erfolgte Erstickungstod trat dadurch bereits in Bewusstlosigkeit ein. Nach der Feststellung des Todes durch den beigezogenen Arzt verblieb der Gehenkte meist eine Stunde am Galgen und wurde nach Obduktion durch das Gerichtsmedizinisches Institut während der Nachtstunden in aller Stille an undeklarierter Stelle beerdigt. Diese an Hand der ersten nicht-öffentlichen Hinrichtungen beschriebe Vorgangsweise sollte sich bis zur Aufhebung der Todesstrafe nach Ende des Ersten Weltkrieges fast unverändert wiederholen, sie wurde auch in den Jahren 1934 bis 1938 sowie nach 1945 praktiziert. Waren in den Jahren bis zum Zusammenbruch der Monarchie die Wiener Scharfrichter, so wurde der Scharfrichter nach Wiedereinführung der Todesstrafe im November 1933 nur fallweise in Dienst gestellt. Bei Zusammentreten des Standgerichtes hatte er sich seinen Gehilfen im Gebäude des Wiener Landesgerichtes dem Gericht zur Verfügung zu halten, um den unmittelbar nach dem Urteilsspruch zu erwartenden Strafvollzug durchzuführen. Die Bezahlung erfolgte teilweise, da der Scharfrichter in diesen Jahren auch einem anderen Beruf nachgehen konnte. Das gleiche Dienstverhältnis wurde auch beim Scharfrichter der Zweiten Republik wahrgenommen, die Aufhebung der Todesstrafe im Jahre 1950 erübrigte spätere personal- bzw. dienstrestliche Fragen.

Fast 100 Jahre war das Landesgericht Stätte der nicht öffentlichen Hinrichtung in Wien. Dreizehnmal läutete die Totenglöcke der Gefangenenhauskapelle für einen Gehenkten in den Jahren 1876 bis 1918, einundzwanzigmal waltete der Scharfrichter von 1934 bis 1938 seines Amtes. Starb 1938, nach dem „Anschluss", nur eine Person durch die Hand des Scharfrichters – das reichsdeutsche Fallbeil hatte inzwischen den österreichischen Galgen abgelöst -, so dröhnte der dumpfe Schlag des Fallbeils in den Jahren 1939 bis 1945 mehr als tausend mal im „Grauen Haus". Nach 1945 war das Landesgericht noch einunddreißigmal Schauplatz einer Hinrichtung, bis über Beschluss des Nationalrates die Todesstrafe auch in Österreich aufgehoben wurde.

Auch der Schauplatz des schrecklichen Geschehens, der Spitals- oder Galgenhof im Wiener Landesgericht, gehört bereits der Vergangenheit an – großzugige Umbauten des Gebäudekomplexes lassen die ehemalige Richtstätte heute nicht mehr erkenne. Auch die Geräte selbst, die Würgegalgen, muten nun mehr wie Relikte weil zurückliegender Zeiten an, obwohl sie noch vor 35 Jahren in Verwendung standen. Als die letzten österreichischen Galgen dem Kriminalmuseum auf Schloss Scharnstein einverleibt wurden, erklärte der damalige Justizminister Dr. Broda, dass es ihn „… zutiefst befriedige, dass der Galgen im Museum gelandet sei". Ein Zitat, dessen Inhalt sicher von den meisten Menschen in unserem Lande geteilt wird.

Summary

Harald Seyrl follows the evolution of the capital punishment in Austria. 11 January 1868 marked the end of public executions under the Monarchy. In 1873 a decision was taken that all legal proceedings and executions will take place solely within the walls of the prison, using the English system of the gallows. 16 December 1876 the first execution took place. Seyrl offers a fairly detailed description of an execution. After the fall of the Monarchy, the death penalty was reintroduced between 1934 and 1938 and after 1945, but was just occasionally used. For almost 100 years the Vienna Regional Court was used for non-public executions. At present, the gallows are stored in the Criminal Museum in Castel Scharnstein.

Buchpräsentation: Mich könnt ihr löschen, aber nicht das Feuer. Biografien der im Wiener Landesgericht hingerichteten WiderstandskämpferInnen

Willi Weinert[7]

Nach der Begrüßung durch den Präsident des Straflandesgerichts Wien, Mag. Forsthuber, leitete der Autor mit der Feststellung ein, dass das, worüber er jetzt sprechen wird, nichts mit den Holocaust zu tun hat, sondern dass es hier um die Darstellung des Widerstands von Menschen geht, die im bewussten Gegensatz zum NS-Regime gestanden sind. Sie haben, ob nun aus konservativ-christlichen oder kommunistischen Ansätzen her, in organisierter Form auf unterschiedliche Weise Widerstand geleistet und wurden letztendlich von den faschistischen Terrorregime zum Tode verurteilt und hingerichtet.

Der Autor sieht in der Überstülpung des Holocaustbegriffs über die Opfer des Widerstandskampfes – er erläuterte das an einigen Beispielen – den Versuch, diesen Widerstandskampf wegzuretuschieren. Als Versuch, diesen Begriff zum Synonym für jegliche Gräuel der Nazis, ob es sich um die Vernichtung der Juden, um die ebenfalls im Millionenbereich liegende Vernichtung von Zigeunern handelt, zu setzen.

Der zehntausendfache Mord an den aktiven Widerstandskämpferinnen und Widerstandskämpfern wird in den Hintergrund gedrängt. Der Massenmord wird zum Judenmord, zum kaum erklärbaren Holocaust, der Faschismus als System, mit ökonomischen und politischen Implikationen wird auf die Verfolgung und Ermordung von Juden reduziert und damit als unerklärbar verharmlost.

Dr. Willi Weinert will in seinem Buch diejenigen, die die Notwendigkeit erkannten, Wiederstand zu leisten und dabei hingerichtet wurden, dem Vergessen entreißen, auch eingedenk der Tatsache, dass diesen Menschen und ihrem Widerstandskampf nach 1945 vom offiziellen Österreich nie der Stellenwert beigemessen wurde, der ihnen zustehen müsste.

Der Ausgangspunkt seiner Arbeit war die Gruppe 40 am Wiener Zentralfriedhof, wo die Leichen der im Wiener Landesgericht hingerichteten Menschen – nachdem sie vom Anatomischen Institut der Universität Wien „ausgewertet“ worden waren – im Geheimen begraben wurden. Dort befinden sich etwa 400 Gedenksteine, auf denen ca. 500 Namen verzeichnet sind. Der Autor wies darauf hin, dass es sich bei der Gruppe 40 um die größten Gedenkort Österreichs handelt, auf dem der überwiegende Teil jener ÖsterreicherInnen begraben

[7] Willi Weinert, Mich könnt ihr löschen, aber nicht das Feuer. Biographien der im Wiener Landesgericht hingerichteten WiderstandskämpferInnen; 3. Auflage, Wien 2011; 352 Seiten; 765 Fotos u. Abb. (z.T. farbig); ISBN 978-3-9502478-2-4; Preis: 24.-. Bezugsmöglichkeit: wiener.sternverlag@chello.at oder Buchhandlung Hans Jauker, Wien 14, Sampogasse 6

wurde, die von der NS- Justiz ob ihres aktiven Widerstandes zum Tode verurteilt und hingerichtet wurden. Nachdem 2005 die 1. u. kurz danach die 2. Auflage erschienen sind, begann er 2010 mir der Arbeit an der 3. Auflage. Das Bestreben war es, die Biografien dieser Menschen lebendiger darzustellen, dies führte zu einer Verdoppelung des Umfangs, und aus dem Bemühen, diesen wieder ein Gesicht zu geben, resultierte eine Ergänzung der schon bisher vorhandenen Personenporträts.

Er erinnerte daran, dass auf den Tag genau vor 68 Jahren im Landesgericht zahlreiche Widerstandskämpfer und die Widerstandskämpferin geköpft wurden – manche von ihnen kaum zwanzig Jahre. Am Beispiel seiner Elter, die am 17. Juni 1941 vom so genannten Volksgerichtshof zu einer hohen Zuchthausstrafe verurteilt worden waren, zeigte er auf, welchen Einfluss auch die Kriegsereignisse auf das Ausmaß und den Umfang der Verurteilungen hatte und dass Widerstandskämpfer, die zu einer hohen Zuchthausstrafe verurteilt worden waren, durchaus eine höhere Überlebenschance hatten, als diejenigen, die nur eine kurze Strafe erhielten, weil diese nach Strafverbüßung in vielen Fällen in ein KZ eingewiesen wurden, wo nicht wenige von ihnen zu Tode kamen.

Der Autor wies darauf hin, dass am 11. Juni 1941 in Österreich das erste Todesurteil gegen einen Widerstandskämpfer (Eduard Jaroslavsky) gefällt wurde und darauf, dass das erste Todesurteil gegen einen österreichischen Widerstandskämpfer – es war dies gegen der Steirer Anton Buchalka – schon am 30. Jänner 1940 in Berlin ausgesprochen wurde. Buchalka und Jaroslavsky wurden beide in Berlin-Plötzensee geköpft (10.7.1941, bzw. 16.9.1941).

In weiterer Folge skizzierte er den „Weg in den Tod“ anhand von Zitaten aus Büchern und Dokumenten, die nachvollziehbar machten, was mit den Menschen geschah, gegen die in der Hauptverhandlung die Todesstrafe ausgesprochen worden war. Sie kamen sofort nach der Verhandlung in die Todeszellen, auch Köpflerzellen genannt. Dort verbrachten sie die Zeit, in der das so genannte Gnadenverfahren lief. Mit wenigen Ausnahmen gab es keinen „Gnadenerweis“ für die Verurteilten und sie kamen, nachdem der Reichjustizminister den Erlass ihrer Hinrichtung unterzeichnet hatte und den Oberreichsanwalt mit der Hinrichtung beauftragte, am Tag der festgelegten Hinrichtung um 10 Uhr vormittags in die Armensünderzellen. Dort konnten sie letzte Briefe schreiben und mit den Gefängnisseelsorgern Gespräche führen. Um 18 Uhr begannen dann die Hinrichtungen, bei denen im Minutentakt die Menschen aufs Schafott gezwungen und geköpft wurden. Bis zu 30 Hinrichtungen fanden oft an einem Abend im Landesgericht statt.

Im Verlauf seiner Ausführen, die oft auf die Kinder der Hingerichteten Bezug nahmen, begrüßte er Zahlreiche von ihnen, die zur Buchpräsentation gekommen sind. Der Autor wies darauf hin, dass er auf Grund seiner Recherchen auf eine Zahl von weit über 300 Kinder gekommen ist, die auf Grund der Hinrichtung der Vaters als Halbweisen aufgewachsen sind, einige auch als Vollwaisen, weil beide Elternteile entweder hingerichtet wurden oder die Witwen kurz danach verstarben. Eine Tatsache, die wenig bekannt ist, ist die, dass das NS-Regime

dutzende Jugendliche zum Tode verurteilt und hingerichtet hat. 3% aller im LG I hingerichteten WiderstandskämpferInnen waren noch keine 20 Jahre, als sie geköpft wurde. Eine von diesen Jugendlichen war Edith Gadawits, die gemeinsam mit Felix Imre am 24.9.1943 zum Tode verurteilt worden ist. Während Imre geköpft wurde, verlief ihr Gnadenverfahren – Weinert zitierte aus dem einschlägigen Briefwechsel der NS-Behörden – positiv und ihr wurde nach sieben Monaten in der Todeszelle mitgeteilt, dass sie zu 12 Jahren Zuchthaus begnadigt worden sei. Frau Edith Gadawits wohnte ebenfalls der Buchpräsentation bei.

Abschließend stellte der Autor der neben ihm Platz genommenen Grete Machalek einige Frage. Frau Machalek ist ebenso ein „Kind" eines Hingerichteten. Ihr Vater Karl Plotnarek wurde im Dezember 1942 zum Tode verurteilt und am 16. März 1943 geköpft. Sie erzählte, wie sie ihren Vater in der Justizanstalt am Mittersteig besuchen konnte, wie sie mit ihrer Mutter vor den Türen des Großen Schwurgerichtssaales warteten, weil sie wussten, dass er bei einer Zeugenaussage anwesend war, damit sie ihm beim Herausgehen sehen konnten. Und nachdem ihr Vater hingerichtet worden war, gelang es ihrer Mutter ins Anatomische Institut vorzudringen, wo sie den kaum wieder zuerkennenden Leichnam auf einer Seziertisch liegen sah, mit den Kopf zwischen den Beinen. Auch dass sein Körper in der Gruppe 40 begraben wurde, hat ihre Mutter in Erfahrung gebracht, und noch vor Kriegsende ließ sie dort einen Grabstein aufstellen, ohne dass sie daran gehindert wurde. Frau Machalek erinnerte sich sehr gut daran, dass sie mit ihrer Mutter noch in den letzten Kriegstagen zum Grab des Vaters fuhren und dabei auch einen Bombenangriff erlebten, der sie zwang, aus der Straßenbahnlinie 70 auszusteigen und einen nahe gelegenen Luftschutzraum aufzusuchen.

Nach dem Ende der Veranstaltung führte Präsident Forsthuber noch einige Interessierte in den Großen Schwurgerichtssaal, wo er über die Geschichte des Landesgerichtes sprach.

Summary

Willi Weinert presented his book, "You can kill[8] me, but not put out the fire", commemorating those who resisted the fascist terror regime and, in turn, were judged and executed. He points out that, most of the time, the Holocaust is reduced to the terrible crimes committed against Jews and Rroma. What of the Resistance fighters?

11 June 1941 the first death sentence against a resistance fighter was pronounced. Weinert describes the "Road to death", pointing to the fact that there were evenings when up to 30 resistance fighters were executed. He also remembered the families of the resistance fighters, in particular the children who lost one or both their parents. Some of them were present in the audience as well, such as Ms. Grete Machalek, who illustrated her own experience.

[8] Play of words: "löschen" in German stands for both "to put a fire out", and "to kill somebody".

Max Zitter – ein Eisenbahner - zum Tode verurteilt und hingerichtet am 30. Juni 1942

Armin Maximilian Zitter

Die Geschichte um Max Zitter

Max Zitter wurde am 7.8.1901 in Tschirnig auf einem Bauernhof außerhalb von Sankt Veit an der Glan geboren. Seine Mutter Margarethe Zitter war dort Magd und der Vater Maximilian Pferdeknecht. Max war das vierte und jüngste Kind der Familie.

Sein Vater war ein brutaler Geselle und Max spürte die harte Erziehung am eigenen Leib. Max ging mit 16 zur Bahn als Hilfsarbeiter. Dort ergriff er die Chance, durch eifriges Lernen Prüfungen abzulegen und weiterzukommen. So schaffte er es bis zum Zugführer bei der Bahn in Sankt Veit, wo er seine Zugbegleiter auf den Fahrten durch Kärnten und der Steiermark anführte. Wie die meisten bei der Bahn war auch Max Sozialist und gab bei jeder Wahl seine Stimme den Sozialdemokraten, bis schließlich unter Dollfuß die Eisenbahner gezwungen wurden, der Vaterländischen Front beizutreten. Mit dem Anschluss an Hitlerdeutschland wurde die NSDAP letztendlich die einzige Partei, die auch für die Reichsbahner verpflichtend war. Max blieb im Herzen trotzdem Sozialdemokrat, aber da er vor dem Anschluss bei der Eisenbahnerkapelle als Bassflügelhornmusiker mitwirkte, und die Kapelle zum SA-Musikzug umfunktioniert wurde, trat auch er als SA-Mitglied diesem Verein bei.

Max hat zu Weihnachten 1926 Maria Kuss geheiratet. Maria schenkte Max 1927 den ersten Sohn – Maximilian. Er wird von Vater hart angepackt; hat er doch das Ziel, aus seinem Sohn einen tüchtigen Menschen zu machen. Ein Leben als Knecht sollten seine Kinder nie führen müssen, deshalb wird Maximilian auch angehalten, einer der Besten in der Schule zu sein, um danach eine Ausbildung zum Ingenieur zu erhalten. Acht Jahre später, 1935, kommt seine Tochter auf die Welt, und einige Jahre später zwei Söhne - 1939 und 1940. Rund um seine Familie baut Max für den Nebenerwerb eine kleine Landwirtschaft auf. Eine Kuh und ein paar Schweine stehen im Stall und viele Hühner tummeln sich am Hof. Angrenzend an den Hof hat er ein großes Feld, wo er Mais und Kartoffeln anbaut und auf einer etwas abseits gelegenen Wiese lässt er seine Kuh neben denen des Nachbarbauern grasen. In seinem zweistöckigen Haus hat er das Erdgeschoß an Mieter vergeben, die am Hof mithelfen. Max hat alle Hände voll zu tun. Dienst bei der Reichsbahn, seine Familie, die Landwirtschaft und auch die Musik. Das alles zu schaffen war in Friedenszeiten für ihn kein Problem. Aber der Dienst wird immer anstrengender, da einige der Eisenbahnerkollegen an die Front einrücken mussten und deshalb die freien Diensttage weniger werden. Mit Kriegsbeginn hat sich auch Unsicherheit breitgemacht, denn jetzt muss er auch an den Staat Teile der Ernte und auch Fleisch nach einer Schlachtung abliefern.

Max besitzt natürliche Autorität, ist im Dienst korrekt und hält sich streng an die Dienstvorschriften. Von seinen Vorgesetzten wird er gelobt, jedoch einigen seiner Zugbegleiter, die seine Genauigkeit und auch Kritik sehr oft zu spüren bekommen, passt sein Verhalten nicht. Bei manchen gilt er als Pedant und überkritisch und da er seine strengen Anordnungen konsequent einfordert wird er auch öfters von anderen Eisenbahnern angefeindet. Für viele ist er aber ein korrekter und hilfsbereiter Vorgesetzter, von dem man auch außerhalb des Dienstes alles haben kann. Ab Beginn des Russlandfeldzuges müssen viele Frauen mit ansehen, wie Männer und Söhne sich von zu Hause verabschieden und in den Krieg ziehen – für Hitler - in einen erbarmungslosen Krieg! Die verbleibenden Eisenbahner haben alle Hände voll zu tun, um die Soldaten in den Wehrmachtszügen in ihre Kasernen zu führen, von wo sie an die Front gekarrt werden.

Max holt sich nicht nur regelmäßig die Informationen über den Kriegsverlauf von den Propagandameldungen der deutschen Radiosender, sondern auch, wie viele andere seiner Kollegen, Informationen aus den verbotenen Untergrundsendern so. Es wird viel unter vorgehaltener Hand diskutiert, auch über Aktionen, die die Kommunisten ausführen. Parolen gegen Hitler werden überall sichtbar und Flugzettel werden verteilt. Max wird oft von eingeschworenen Kommunisten angesprochen, mitzumachen – gegen das Regime zu revoltieren, aber er wehrt sich dagegen – mit den Kommunisten will er nichts zu tun haben.

Nach fortlaufender Radikalisierung durch das Regime beginnt Max, zu grübeln. Die brutalen Machenschaften der Sicherheitsorgane – insbesondere Übergriffe der Gestapo, die gegen alle Andersdenkenden vorgehen und die von Hitler angeordnete Arisierung mit Gewalt durchziehen – lassen Max mit seinem Gerechtigkeitsempfinden radikal umdenken. Es macht sich Widerstand in seinem Kopf breit.

Anfang Juli 1941 verändert sich das Leben für Max und einige seiner Eisenbahnerkollegen. Aus einem Aufruf im Untergrundsender vernimmt er und ein paar Kollegen, dass die Eisenbahner aufgefordert werden, einen durch Kärnten fahrenden Wehrmachtstransport mit italienischen Soldaten zu stören. ‚Was meinen die denn', fragt Max einen seiner engsten Kollegen am Tag darauf! Dieser erklärt ihm, dass Züge zum Stillstand gezwungen werden sollen, wenn nicht gar zum Entgleisen zu bringen, um dadurch Verzögerungen im Transport herbeizuführen. Es soll also Sabotage an Einrichtungen der Reichsbahn vollzogen werden? Max befragt einen weiteren Kollegen und diskutiert mit ihm über Effizienz und Sinn solcher Aktionen. Der kommunistisch eingestellte Kollege rät Max aber eindringlich davon ab. Er verweist auch auf die Gefahr hin, entdeckt zu werden, da die Gestapo diese Aufrufe doch auch abgehört hätte. Max zieht sich zurück, jedoch hat er nicht mit dem blinden Enthusiasmus seines erstbefragten Kollegen gerechnet, der das geführte Gespräch gleich als Zustimmung für die Gründung einer Widerstandsgruppe auffasste und weitere Kollegen anheizt, an solchen Aktionen mitzumachen. Es dauert nicht lange, da treffen die ersten Meldungen über durchgeschnittene Bremsschläuche und aus dem Bremssystem entfernte

Dichtungsringe an abgestellten Wehrmachtszügen bei der Reichsbahnzentrale ein. Die Folge davon: Züge können nicht fahren, solange die Schäden nicht behoben sind – oder nur mit großem Aufwand handgebremst eine kurze Strecke bewältigen.

Nach Intervention der Reichsbahnzentrale direkt bei der Reichszentrale in Berlin, werden Gestapobeamte angewiesen, die Sache so rasch wie möglich zu klären und die Verursacher – kommunistische Agitatoren werden dahinter vermutet – sofort dingfest zu machen. Spitzel werden unter den Reichsbahnern eingeschleust und – sie werden tatsächlich fündig! Einige Eisenbahner plaudern und wissen, wer dahintersteckte oder wo Sabotage durchgeführt wurde. Eine kommunistische Gruppe unter den Eisenbahnern in der Steiermark wütet unaufhörlich und es mehren sich die Sabotageakte durch aufgeschnittene Bremsschläuche, entfernte Dichtungsringe oder Einfüllen von Eisenfeilspänen in das Bremssystem. Unfälle – Entgleisungen, falsch gestellte Weichen – häufen sich auf der Bahnstrecke Villach – Bruck an der Mur.

Ab Anfang September 1941 werden die ersten Eisenbahner in der Steiermark verhaftet. Richard Götzinger und Johann König, aus Leoben werden in das Gestapogefängnis – die ‚Burg' – in Klagenfurt eingeliefert. Auch Peter Schlömmer, ein enger Vertrauter von Max aus seiner Dienstgruppe, wird verhaftet – war er doch mit König auch öfters beisammen gesehen worden. Die brutalen Verhörmethoden der Gestapobeamten führen zu weiteren Festnahmen – und es geht Schlag auf Schlag: Weitere Eisenbahner aus St. Veit werden verhaftet: Josef Kuchler, Andreas Waste, dann Michael Essmann, Ludwig Höffernig, Karl Zimmermann, Franz Tripolt, Josef Hermann, Leopold Krug, Anton Truck, Ernst Martl – und zuletzt am 5.10.1941 wird Max Zitter in der Nacht von Gestapobeamten aus seinem Bett geholt. Seine unglückliche Frau und die schockierten Kinder müssen die Verhaftung mit ansehen. Max wird nach Klagenfurt gebracht, in Schutzhaft genommen und verhört. Max wird lange gequält und mit Aussagen seiner Kollegen konfrontiert. Unter Folter hat man ihnen Zugeständnisse erpresst. Viele hatten unter Qualen Taten eingestanden, die sie in Wirklichkeit nie begangen hatten. Später im Prozess werden sie alles widerrufen, aber die Richter werden ihnen nicht Glauben schenken. Max ist geständig, kann aber nur wahrheitsgemäß zugeben, anfangs über mögliche Sabotageakte gesprochen zu haben, aber sich sofort wieder zurückgezogen und selbst keinen einzigen Sabotageakt begangen zu haben. Dies beteuert er immer wieder aber die Gestapobeamten glauben ihm nicht. Es ist fatal, dass Max aufgrund seiner Beredsamkeit und seines Ehrgeizes als Anführer der Gruppe - und zwar einer kommunistischen Widerstandsgruppe - von den Gestapobeamten und letztlich vom Ermittlungsrichter abgestempelt wird.

Max und seine Kollegen sitzen im Landesgericht Klagenfurt lange in Haft und warten auf ihren Prozess. Max schreibt viele Briefe an seine Gattin. In Kassibern teilte er ihr mit, wie es tatsächlich dazu gekommen ist, dass er in das Visier der Gestapo geraten und schließlich verhaftet worden war. Über den Aufruf im Sender schreibt er und auch über die Aktionen, die später seine Kollegen beabsichtigten, durchzuführen. Er gibt seiner Frau Anweisungen, wie sie

den Hof weiterführen soll und entschuldigt sich auch in vielen Briefen, dass er seine Familie in eine so missliche Lage gebracht hatte. Immer mehr Kassiber schreibt er mit der Bitte um Hilfe, dass sie zu Kreisleiter oder zu Verwandten gehe und letztlich sogar beim Gauleiter in Klagenfurt vorsprechen möge, um einen Aufschub des Prozesses zu erhalten oder an die Front eingezogen zu werden – auch wenn es irgendeine Sondereinheit wäre – dort würde er für Hitlerdeutschland bis zum Tod kämpfen. Seine Frau geht von einer Stelle zur anderen. Überall wird sie abgewiesen – Max sei ein Hochverräter, er hätte sich das vorher überlegen müssen, sagen sie alle. Was Max auch noch nicht weiß, ist, dass der Fall an das Reichskriegsgericht Berlin übertragen wurde. Somit befasst sich mit den Widerständlern nicht der Volksgerichtshof, sondern ein Militärgericht, und der strenge Gerichtsherr, der keine Gnade lassen will, gibt seine Anweisungen aus Berlin an die Richter! Vom 14.4. bis 25.4.1942 dauert der Prozess um die 15 Eisenbahner. Der 3. Senat des Reichskriegsgerichts mit dem Senatspräsidenten Schmauser als Vorsitzenden entscheidet über das Schicksal der 15 Eisenbahner. Am 25.4.1942 ergehen die Urteile, die wie Keulenschläge auf viele Eisenbahner einprasseln. Max, vom Senatspräsidenten als unruhiger Streber und Anführer der Gruppe bezeichnet, der sich die kommunistisch eingestellten Dienstkollegen zur Ausführung seiner geplanten Sabotageakte instrumentalisiert hat, wird mit 9 anderen Kollegen zum Tode verurteilt – wegen Vorbereitung zum Hochverrat, Begünstigung des Feindes, Nichtanzeige und illegalen Radiohörens. 4 weitere werden zu 10,8,5 und 3 Jahren Zuchthaus verurteilt. Nur Martl wird ‚Mangels an Beweisen' freigesprochen – seine Tage waren ohnehin gezählt, da er an offener Tuberkulose litt. Tags darauf wird Max mit seinen Kollegen Schlömmer, Essmann, Waste, Kuchler, Zimmermann und Höffernig aus St Veit, sowie mit den Steirer Kollegen Götzinger, König und Straubinger nach Wien in das Straflandesgericht überstellt. Dort sitzt Max im E-Trakt in Zelle E80 und wartet auf seine Hinrichtung – so wie seine Kollegen. Die Gnadengesuche an das Reichskriegsgericht in Berlin werdenn durchwegs abgelehnt. Am Vorabend des 30.6.1942 erfährt Max, dass der Hinrichtungstermin für 5:00 Uhr früh festgesetzt wurde. Er erhält 10 Zigaretten und Bleistift und Papier, um den Abschiedsbrief zu schreiben. Um halb fünf Uhr früh werden alle in der Armen Sünder Zelle zusammengeführt, Max sieht sie dort zum letzten Mal – zerschunden und zerschlagen sind ihre Körper, psychisch sind sie gebrochen. Mit Todesangst in ihren Augen warten alle auf ihre Hinrichtung. Getröstet vom katholischen Pfarrer Eduard Köck und dem evangelischen Pastor Hans Rieger, geben sie sich ihrem Schicksal hin.

Um 5:00 früh wird Max Zitter als Erster der Gruppe aufgerufen und von den Wärtern zur schwarzen Türe des Hinrichtungsraums geführt. Hinter der Türe warten schon Staatsanwalt und die Scharfrichter. Der Staatsanwalt schmettert ihm die so verhassten Worte entgegen: ‚Max Zitter, Sie wurden wegen Vorbereitung zum Hochverrat zum Tode verurteilt – das Urteil wird jetzt vollstreckt'. Zwischen 5:00 und 5:27 an diesem Dienstag, den 30. Juni 1942 sterben 10 Eisenbahner auf der Guillotine im Straflandesgericht Wien. Die leblosen Körper werden in das anatomische Institut gebracht und später die Leichenteile am Wiener Zentralfriedhof in der Gruppe 40 verscharrt. *Die 10 Eisenbahner waren die ersten politischen Häftlinge, die wegen Vorbereitung zum Hochverrat von den Schergen des Nationalsozialismus im LG Wien hingerichtet wurden.* Über 1100 Häftlinge sollten bis Ende 1945 noch in den Tod folgen.

Ab Generalmobilmachung im Jahr 1945 musste auch Sohn Maximilian an die Front. Nach kurzem Kriegseinsatz wird er an der Elbe von amerikanischen Soldaten gefangen genommen und in ein Gefangenenlager nach Marseille gebracht. Nach ein paar Monaten kehrt er wohlbehalten wieder heim. Jetzt erst macht er die Ingenieursschule fertig und bewirbt sich vorerst um einen Posten bei der Bahn in Sankt Veit. Ein Direktor der Eisenbahn in Sankt Veit – vorher ein ‚richtiger Nazi' -, der die Situation um Maximilians Vater auch genau kannte, drückte ihm ein Signalhorn in die Hand mit den Worten: ‚Du kannst bei der Bahn als Signalgeber beim Bautrupp arbeiten. Wenn der Zug kommt, bläst du rein, sodass die Arbeiter das Gleis verlassen und wenn der Zug weg ist, bläst du wieder'. Mit dem Nachsatz: ‚Sei froh, dass du als Sohn eines Verräters diese Arbeit kriegst!' Maximilian, bereits ausgebildeter Ingenieur, der die Härte des Regimes voll mitbekommen hatte, aber durch Vater auch kämpfen lernte, ging danach als Justizbeamter zum Bezirksgericht Sankt Veit. Maximilian heiratete, und ich kam 1949 zur Welt. Maximilian, mein Vater, übernahm mit 22 Jahren die Vormundschaft über seine minderjährigen Geschwister und bereitete sie auf das Berufsleben vor. Seine Mutter Maria starb 1950 nach schwerer Krankheit. Die schrecklichen Ereignisse, insbesondere die Hinrichtung ihres geliebten Mannes Max hat sie nicht überwunden. Sie starb mit 39 Jahren.

Mein Vater Maximilian arbeitete 46 Jahre im Dienste der Justiz und erhielt für seine Verdienste die Ehrenmedaille der Republik Österreich verliehen. Er starb am 22. Jänner 2010 im Alter von 83 Jahren nach schwerer parkinsonscher Krankheit. Viele, die ihn kannten, wissen, dass er einer der korrektesten Menschen war, der auch bis zu seinem letzten Atemzug mit Rat und Tat den Mitmenschen behilflich war. Maximilian hatte sich nie politisch betätigt.

Die grausame Herrschaft des Nationalsozialismus und die schrecklichen Begleiterscheinungen, die an Brutalität und Grausamkeit durch nichts zu überbieten sind, dürfen nie wieder aufleben dürfen. Jeder nationale Radikalismus muss bekämpft werden und darf nie wieder unter uns Menschen Fuß fassen. Menschen mit angeborenem Intellekt – insbesondere Jugendliche – müssen jede mögliche Kraft aufbieten, um derartige ‚Geschwüre' nie wieder irgendwo aufkeimen zu lassen.

Armin Maximilian Zitter
Wien, den 10. März 2012

O.a. TEXT nur mit vorheriger schriftlicher Genehmigung für die Öffentlichkeit zugänglich.

Summary

Armin Maximilian Zitter recounts the story of his grandfather, Max Zitter, a family-man and conductor in Sankt Veit. He notes how his family's situation changed once the preparations for war were under way. Although a social-democrat himself, he did not want to associate with the

communists in denunciating the fascist regime. The methods used by the Gestapo to repress any form of opposition made him think twice. When they were asked to delay a train transporting Italian soldiers in Kärnten, together with some other colleagues, he sabotaged the braking system of the trains. From Gestapo Headquarters in Berlin a commission was set up to investigate the case, starting September 1941. Max Zitter was labeled leader of the communist resistance group. A military court mercilessly judged the case between 14 April and 25 April 1942. 15 were convicted of high treason, of which, on 30 June 1942 10 were guillotined (5.00 to 5:27 a.m.). This was the first round of executed political detainees of the 1,100 that were to follow until the end of 1945. Maximilian Zitter, Max Zitter's first son, and the father of the author, worked in the Justice Ministry for 46 years and was awarded the Medal of Honor by the Republic of Austria. In his conclusion, Armin Maximilian Zitter appeals to the young generation of today to take a stance and make sure that such national radicalism will never rise to power again.

Eduard Köck, Gefängnispfarrer unter dem Nazi-Regime[9]

Philipp Hampl und Christian Kuhn

Geboren am 30. April 1891 in Hohenau a. March, besuchte Eduard Köck nach Beendigung der Volksschule 1902-1910 das k.k. Staatsgymnasium in Hollabrunn (heute Oberhollabrunn). Nach Ablegung der Reifeprüfung dort trat er in das Priesterseminar ein, um an der theologischen Fakultät der Universität Wien Theologie zu studieren. Am 25. Juli 1914 wurde er im Dom zu St. Stephan vom Kardinal Fürsterzbischof Dr. Friedrich Gustav Piffl zum Priester geweiht. In den Jahren 1914 bis 1921 wirkte er als Kaplan in den Pfarren Kirchschlag, Inzersdorf und Wien 15, Rudolfsheim. Mit Dekret von 2.4.1917 wurde er zum Feldkurat in der Reserve ernannt, aber die Einberufung blieb ihm erspart, da der Krieg im nächsten Jahr endete.

Als der seit 1915 vakante Posten des 2. Seelsorgers am landesgerichtlichen Gefangenenhaus I ausgeschrieben wurde, bewarb sich Kooperator Eduard Köck um diese Stelle und wurde auch am 27. Februar 1921 zum zweiten Seelsorger neben Msgr. Josef Supp ernannt. Seine Tätigkeit in diesem Amte lässt sich klar und deutlich umgrenzt in 3 Zeitperioden einordnen.

Von 1921 bis 1933 könnte man von einer normalen, geordneten und geregelten Seelsorge sprechen, die einer Allgemein- aber auch einer Individualseelsorgebetreuung größeren Ausmaßes hinreichend Raum ließ. Mit Rat und Tat stand er den Gefangenen jederzeit zur Seite und half, wo er nur konnte.

Die Jahre 1934 bis 1938 brachten dann für Eduard Köck ganz schwere Belastungen in seiner Tätigkeit, als sich nach dem blutigen Februaraufstand und nach dem Juliputsch die Gefängnisse mit den sogenannten „politischen Gefangenen“ füllten, die zum Großteil doch nach dem Trost der Religion verlangten, besonders dann, wenn der Tod durch den Henker ihr Schicksal wurde. Zusammen mit Msgr. Josef Supp war er Tag und Nacht auf dem Weg, um möglichst vielen Trost und Hilfe zu bringen in ihrer seelischen und vielfach auch sozialen Not. Köck wusste damals noch nicht, dass dies erst das Vorspiel zu einer der größten Katastrophen in der Geschichte unseres Heimatlandes sein sollte.

Der dritte Abschnitt seiner Wirksamkeit von 1938 bis 1945 kann wohl ohne Übertreibung als seine große Passion bezeichnet werden. Die Behinderung der Seelsorge allgemein mag sicherlich leidvoll und quälend auf sein Gemüt gewirkt haben, aber in ganz schwere Seelennot geriet er, als die Gefängnisse überfüllt waren mit Menschen, die aus allen Altersstufen und Berufen wegen ihrer Abstammung, Weltanschauung oder Nationalität als sogenannte „politische Verbrecher“ und als „Staatsfeinde“ eingeliefert wurden. In ihren Ängsten und Nöten erwartetem

[9] Aus: *Graues Haus*, von Heinrich Zeder, Wien 1983 (bearbeitet von Philipp Hampl und Christian Kuhn)

sie gerade vom Pfarrer Hilfe und Beistand. Dazu musste er ein besonderes Augenmerk auch den vielen in Haft befindlichen Priestern zuwenden, Ordensleute und Weltpriester, deren religiöse Betreuung sehr oft gar nicht gestattet war. Wir finden da ganz bekannte Namen wie: Prälat Jakob Fried, Wien, Abt Bernhard Burgstaller und 5 Ordenspriester, Stift Wilhering, Ordinariatskanzler Josef Weinberger (später Generalvikar) Linz D. und Professor Roman Scholz, Stift Klosterneuburg.

Als besonders interessant soll hier vermerkt werden, dass von den hier inhaftierten Geistlichen später drei den Beruf eines Gefangenhausseelsorgers ergriffen und zwar:

- Hofrat G. Rat Walter Süssenbek, lg. Gefangenenhaus I, 1947-1963;
- Hofrat Kons. Rat Heinrich Zeder, lg. Gefangenenhaus I, 1952-1972;
- Hofrat Msgr. Anton Brunner, StA. Stein a.D.;
- Rektor Brunner war zum Tode verurteilt und erwartete in der Zelle EP 56 des Grauen Hauses seine Hinrichtung. Wurde zuletzt aber zu lebenslänglichen schweren Kerker begnadigt.

In einem unvorstellbaren Maße mehrten sich die Todesurteile und damit natürlich auch die Zahl derer, die Köck zum letzten Gang begleiten und vorbereiten musste. Oft waren es Menschen, die religiös und tief gläubig waren. Wie mag ihm da ums Herz gewesen sein, wenn er einen Mitbruder wie z.B. den Chorherrn vom Stift Klosterneuburg Roman Scholz – einen glühenden Verteidiger der Freiheit Österreichs in Wort und Tat – zur Richtstätte geleiten musste. Wie unsagbar muss er selbst gelitten haben, wenn er einer Schwester Restituta aus dem Orden des Hl. Franziskus den nahen Tod durch das Fallbeil ankünden musste. Nach Empfang der Sakramente und Erneuerung der Ordensgelübde starb sie gottergeben. Als ihr Orden den Prozess zur Seligsprechung der Ordensfrau vorbereitete, war ein sicherlich gutes Argument dafür auch in der Sterbematrik der Gefangenenhausseelsorge I zu finden, wo im Band 1943, Folio 28, Reihezahl 166 unter Anmerkungen zu lesen ist:

„Hat durch ihr vorbildliches Verhalten in der Armensünderzelle einige Mithäftlinge zur katholischen Kirche zurückgeführt. Sie starb gefasst und gottergeben.“

Wenn Oberpfarrer Köck in der Betreuung der Todeskandidaten auch verschiedene seelsorgliche Helfer zur Seite standen, so lag die Hauptlast und Verantwortung doch auf seinen Schultern. Galt es doch noch dazu sich um die Angehörigen zu kümmern, denen Hilfe und Trost in ihrer Not bitter Not tat. Es ist daher nicht verwunderlich, wenn man ihm bald den ehrenden Namen „Engel der Gefangenen“ gab. So manche Überlebende aus dieser Zeit und aus diesem Hause nennen ihn heute noch so. Wie schon erwähnt, standen Köck in der Gewährung der letzten Hilfe und aufrichtenden Trostes vor der Hinrichtung verschiedene Priester als Aushilfe zur Verfügung, die natürlich auch aus den anderen Konfessionen kamen. Es mag aber für ihn und alle damaligen Helfer Lohn genug gewesen sein, dass fast alle nach ihrem Beistand verlangten. Die

hauptsächlich den Sterbematriken entnommenen Aufzeichnungen darüber bekunden, dass von den in der Zeit 6.12.1938 bis 4.4.1945 insgesamt 1.184 durch das Fallbeil Hingerichteten 1.020 bis zum bitteren Ende auf ihren eigenen Wunsch religiös betreut wurden, während nur 164 priesterlichen Beistand ablehnten.

Hier soll auch in besonderer Weise eines Mannes gedacht werden, der in dieser schwersten Zeit mit Oberpfarrer Köck gleichsam in einer Notgemeinschaft Hand in Hand brüderlich gearbeitet hat. Es ist der evangelische Pfarrer Hans Rieger. Beide kannten schon zu dieser Zeit den tiefsten Sinn einer Ökumene, indem sie weniger darüber diskutierten, sondern durch die Tat praktizierten. Keiner fragte lange nach dem Bekenntnis, sondern half sofort, wo die Not rief. Diese echte Brüderlichkeit und ökumenische Bereitschaft blieb Pfarrer Rieger auch späterhin bis zu seinem Tode als markantes Wesensmerkmal. Als er 85-jährig starb, trauerten an seinem Grabe zahllose Menschen der verschiedenen Konfessionen.

Die Erinnerung an eine der grauenhaftesten Perioden der Gefangenenhausseelsorge, in der Männer wir Köck und Rieger weit über sich hinauswuchsen in diesem Stahlbad von Blut und Tränen, hat vielfach auch in der Literatur der Nachkriegszeit Eingang gefunden. Weil darin vielfach auch der Gefangenenhausseelsorge ein ehrendes Denkmal gesetzt ist, sollen einige dieser Buchausgaben angeführt werden:

- Jakob Fried, Nationalsozialismus und katholische Kirche in Österreich, Wiener Domverlag 1947;
- Ignaz Kühmayer, Auferstehung, Mayer & Co., 1948;
- Heinrich Zeder, Judas sucht einen Bruder, Wiener Domverlag 1948;
- Hans Georg Heintschel Heinegg, Vermächtnis, Querschnitt Verlag Graz, 1950 gesammelt und herausgegeben von Rüdiger Engerth;
- Hans Rieger, Verurteilt zum Tod, Jugenddienstverlag Wuppertal, 1967.

Summary

The two authors bring forth the notable contribution of Father Eduard Köck, prison priest in the Vienna Regional Court from 1921 to 1945. As the Nazi regime gained more power, and in particular after the bloody February insurrection and the July putsch, an increased number of "political prisoners" were detained (1934-1938). Even more "state traitors" followed between 1938 and 1945, among them even priests and nuns. Father Köck was very committed to his mission. It was not in vain that he was called "The Angel of the Prisoners". Between 6 December 1938 and 4 April 1945 1020 out of 1184 condemned were seen by him on their last road. In his work Father Eduard Köck was helped by Father Hans Rieger as well.

II. All for One Goal: the Universal Abolition of the Death Penalty

The Office of the High Commissioner on Human Rights and the Abolition of the Death Penalty

Zaved Mahmood[10]

Introduction

I, on behalf of the Office of the High Commissioner for Human Rights (OHCHR), welcome this important and timely event organized at the initiative of the Academic Council on the United Nations System in cooperation with the Vienna Regional Court for Criminal Cases, the Ludwig Boltzmann Institute of Human Rights, Das Iranische Wien, Amnesty International and the Polish Institute of Vienna.

2nd Optional Protocol to ICCPR

This year the international community marks the twentieth anniversary of the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights which provides States with the means of signaling their commitment to the abolition of the death penalty.

While Article 6 of the International Covenant on Civil and Political Rights (ICCPR) permits the use of the death penalty in limited circumstances, it also provides that "*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"* (Article 6, paragraph 6, ICCPR). In addition to this provision of ICCPR, there is, as the Optional Protocol notes, a strong suggestion in international law that total abolition of the death penalty is desirable.

In the 20 years since the Second Optional Protocol came into force, the number of formally abolitionist States has almost tripled. The United Nations High Commissioners for Human Rights on many occasions called for the universal ratification of the Second Optional Protocol. Only 74 member states of the United Nations have so far ratified this treaty; although around 150 States are believed to have abolished the death penalty or introduced a moratorium either legally, or in practice. Unfortunately, some member States from the European region have not yet ratified this treaty. It is crucial that all States ratify the Second Optional Protocol to advance the world movement for the abolition of the death penalty. Ratifying the Second Optional Protocol is a key step for States moving towards the absolute abolition.

[10] Zaved Mahmood is a Human Rights Officer at the Office of the High Commissioner for Human Rights in Geneva

States which have ratified the Second Optional Protocol have taken upon themselves not to execute anybody who has been sentenced to death, to take all necessary steps to definitively abolish the death penalty, and to report on what they have done to this effect. In addition, they accept, as a legal obligation, not to extradite individuals to a country where they would face the death penalty, nor can they reintroduce it in their own country. Ratification of the Optional Protocol thus draws a firm line against the use of the death penalty.

They should not also cooperate directly or indirectly with retentionist States in the implementation of the execution. As mentioned in the report (A/HRC/18/20) of the United Nations Secretary General on the question of the death penalty, in some cases, lethal chemicals or equipment were reportedly traded from abolitionist States to retentionist States and used for the implementation of the death penalty. In January 2011, 13 civil society organizations signed an appeal to the European Commission to control the exportation, from Europe, of the drugs that are used in executions in the United States. In April 2011, 14 member States of the European Union, including Spain, urged the European Union to impose an export ban on a drug used for lethal injections in several states of the United States. It is important that all states should cooperate on this subject.

Some positive developments

Some positive developments toward the universal abolishment of the death penalty are discussed in the recent report of the Secretary-General on the use of the death penalty to the Human Rights Council (HRC/18/20). In 2010 and 2011, many Member States took concrete steps to abolish the death penalty. Some Member States substituted the death penalty by life imprisonment with the possibility of pardon or amnesty, conditional freedom or alternative means after having served at least 30 years of imprisonment. Amendments to national constitutions aiming to abolish the death penalty have also been adopted in some States.

Restrictions on the use of the death penalty

Even in countries where the application of the death penalty continues, noticeable steps towards restricting its use were taken through decisions by courts as well as legislative action.

1. *By court decision*

The Court of Appeal of Kenya ruled in July 2010 that the mandatory imposition of the death penalty for murder violated the protections against arbitrariness and inhumane treatment and was "inconsistent with the letter and spirit of the constitution".

Also in 2010, the mandatory imposition of the death penalty with no consideration of the defendant's personal circumstances or the circumstances of the particular offence was declared unconstitutional by the Supreme Court of Bangladesh. In its judgment, the Supreme Court stated

that "any provision of law which provides a mandatory death penalty cannot be in accordance with the Constitution as it curtails the court's discretion to adjudicate on all issues brought before it, including imposition of an alternative sanction upon the accused found guilty of any offence under any law".

In June 2011, in an unprecedented decision, the Bombay High Court of India struck down the mandatory death penalty for drug offences, becoming the first court in the world to do so. The Bombay High Court declared Section 31A of the Narcotic Drugs and Psychotropic Substances Act (NDPS) 1985, which imposes a mandatory death sentence for a subsequent conviction for drug trafficking, 'unconstitutional'.

Most recently, the Supreme Court of the United States granted last minute stay to a man convicted of a double murder in order to further consider a request to reopen the case because of racially-charged statements made by a witness during the trial.

2. *By legislation*

Legislative actions toward restricting the use of the death penalty have been recorded in some countries in the recent years. For instance, in 2010 and 2011, some States adopted laws abolishing the mandatory imposition of the death penalty against individuals convicted of murder, and removing the death penalty for non-violent economic crimes and drug offences. New regulations have been adopted with regard to the use of evidence in cases that may lead to the imposition of the death penalty.

Recent International Developments

1. *General Assembly*

In recent years, the international community also continued its efforts toward the abolition of the death penalty. In particular, on 21 December 2010, the General Assembly adopted its third resolution on the "Moratorium on the use of the death penalty" (A/RES/65/206), reaffirming its two previous resolutions on the same matter (A/RES/62/149 and 63/168). The General Assembly: calls upon States to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty and to progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed. It also calls upon States to establish a moratorium on executions with a view to abolishing the death penalty, and requests States to make available relevant information with regard to their use of the death penalty, which can contribute to informed and transparent national debates.

2. *Human Rights Council*

The Human Rights Council continued to address the question of the death penalty. The death penalty is raised fairly often within the context of the Universal Periodic Review (UPR) of the Council. Out of over 5000 recommendations that were adopted in the first five UPR sessions,

235 recommendations focused on the death penalty.[11] Special procedures of the Human Rights Council also continued to address the question of the death penalty within their respective mandates.

3. Human Rights Treaty Bodies

The United Nations human rights treaty bodies continued to address the question of the death penalty in concluding observations adopted following the examination of State party reports and when considering individual communications. In two recent individual cases, the UN Human Rights Committee reiterated that the imposition of a death sentence after a trial that did not meet the fair trial requirements amounted to a violation of article 6 of the International Covenant on Civil and Political Rights.[12] In another case, the Human Rights Committee considered that the general public has a legitimate interest in having access to information on the use of the death penalty and that the State party had failed to justify the restrictions imposed on the exercise of the author's right to have access to information on the application to the death penalty held by public bodies. The Committee found, therefore, a violation of article 19, paragraph 2, of the Covenant.[13]

Challenges

While these positive developments should be celebrated, challenges remain. In some States, the scope of the application of the death penalty has recently been expanded to human trafficking, organ trafficking, rape, violent robbery and drug-related offences, despite not being considered as the "most serious crimes" under international law. In this respect, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health affirmed that the death penalty for drug-related offences violates international human rights law (A/65/255). In one country, a constitutional amendment bill has also been designed to eliminate future legal challenges to the use of the death penalty. Additionally, there is a lack of transparency on the part of many States in relation to the numbers and characteristics of individuals executed. As a result, up-to-date and accurate global figures are difficult to obtain.

Conclusion

The Secretary General of the United Nations will submit two reports on the death penalty to the UN General Assembly and the Human Rights Council in 2012. International conferences, seminars, meetings are useful to understand the recent trends and challenges for the universal abolition of the death penalty, and thus contribute in the preparation of the reports.

Thank you.

[11] Fact Sheet on Issue Analysis-Death Penalty, see http://www.upr-info.org/-Issues-analysis-.html
[12] Human Rights Committee, communication nos. 1304/2004 and 1503/2006
[13] Human Rights Committee, communication no. 1470/2006

Zussamenfassung

Heuer jährt sich zum zwanzigsten Mal das Inkrafttreten des zweiten Zusatzprotokolls des UN-Zivilpaktes, welches die Mitgliedsstaaten zur Abschaffung der Todesstrafe aufruft. Die Vertragsstaaten verpflichten sich nicht nur, die Todesstrafe abzuschaffen, sondern gleichzeitig, nicht mit ausführenden Staaten zu kooperieren. Auch wenn bis jetzt erst 74 Staaten das Abkommen ratifiziert haben, hat sich die Zahl der Länder, die die Todesstrafe formal abgeschafft haben, verdreifacht. Auch haben in den letzten Jahren immer mehr Staaten konkrete Schritte zur Abschaffung unternommen, wie etwa die Umwandlung der Todesstrafe in lebenslange Haft.

Aber auch in Staaten, welche die Todesstrafe anwenden, lassen sich in zunehmenden Maße Tendenzen zu deren Beschränkung beobachten. Dies geschieht entweder durch die Rechtsprechung, so geschehen in Kenia oder Bangladesch, oder den Gesetzgeber. Auch internationale Organisationen fordern regelmäßig Staaten zur Abschaffung auf, wie etwa die Generalversammlung oder der Menschenrechtsgerichthof.

Auch wenn positive Entwicklungen zu betonen sind, gilt es noch viele Herausforderungen zu bewältigen, da einige Staaten den Anwendungsbereich der Todesstrafe noch erweitert haben.

The Death Penalty and the United Nations Standards and Norms in Crime Prevention and Criminal Justice

Miri Sharon[14]

Ladies and Gentlemen,

I would like to open by thanking Dr. Forsthuber and ACUNS for inviting UNODC to attend this important symposium.

Yesterday you heard from Mr. Sundby, our senior legal officer, on the UN position towards the death penalty and how it is related to our work. He also told you about our relevant operational work.

You also heard from prof. W. Schabas about the global trend towards abolition and efforts to accelerate the rate of abolition.

In my short intervention I would like to present to you the body of United Nations Standards and Norms in Crime prevention and Criminal Justice[15] and discuss their relevance to the issue of the death penalty.

I will argue that if States actually applied this body of norms in its entirety, the application of the death penalty would significantly decrease, if not become completely inappropriate in a criminal justice system that is humane, fair and efficient.

To support this argument, I will focus on one of the specific guarantees included in the right to a fair trial for capital offences, but first, I would like to introduce the UN standards and norms to those less familiar with them.

What are the UN Standards and Norms

The UN Standards and norms are sets of non-binding rules, principles, and guidelines relating to different aspects of criminal justice.

Most of the United Nations standards and norms were adopted by a resolution either of the General Assembly or of the Economic and Social Council.

---

[14] Miri Sharon is a Drug Control and Crime Prevention Officer, United Nations Office on Drugs and Crime

[15] The Compendium of United Nations standards and norms in crime prevention and criminal justice (United Nations, 2006) is available at http://www.unodc.org/pdf/criminal_justice/Compendium_UN_Standards_and_Norms_CP_and_CJ_English.pdf. See also some of the more recently adopted instruments at http://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html?ref=menuside

Therefore they do not impose direct, enforceable, obligations on Member States. At the same time, they are extremely important for Member States:

First, **they represent a benchmark by which one can measure** the fairness, effectiveness and humanity of criminal justice systems. They utilized at the national level as guidelines upon which to conduct in-depth assessments; to measure the extent to which a specific sector of the criminal justice system in a given country is in line with the common thinking of the international community.

Second, standards and norms **are the building blocks for intervention**. Based on the assessment, they can aid key stakeholders to develop national, sub-regional and regional strategies and recommendations tailored to the specific needs of the state.

For example, the Standard Minimum Rules for the Treatment of Prisoners have provided the basis for the development of the European Prison Rules which in turn have been used by the European Court of Human Rights in its jurisprudence.

Many Governments have incorporated various standards and norms into their national criminal justice systems and are continuing to do so through legislative, judicial and institutional reform.

Third, globally and internationally, the standards and norms **represent "best practices"** which can be adapted by States to meet national needs.

Standards and norms instruments vary considerably not only for the subject that they cover but also due to their structure. Some are very specific and focus on a particular, limited area of the criminal justice system, such as **the Safeguards guaranteeing the protection of the rights of those facing the death penalty**.[16]

They cover all aspects of the criminal justice system, including treatment of prisoners, juvenile justice, alternatives to imprisonment, international cooperation, crime prevention, victims' issues, violence against women, standards for judges, prosecutors and lawyers and more.

Although not binding, they may be so closely linked to international human rights instruments, that they could be seen as providing a detailed guide on how to implement the rights recognized by the binding instruments. They also contain elements of human rights conventions.

[16] Adopted by ECOSOC resolution 1984/50

For example, the Guidelines on Justice in Matters Involving Child Victims and Witnesses[17] are based on the main principles of the Convention on the Rights of the Child and the Committee on the Rights of the Child often refers to them in its concluding observations to States.

The Standards and Norms are constantly involving. In fact, next week UNODC is holding a meeting of experts to discuss the possibility of adopting a new instrument on access to legal aid in criminal justice systems.[18]

How do these Standards apply to the issue of the death penalty?

Most of you are probably familiar with the Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty. This document, adopted by the Economic and Social Council in 1984, is still very relevant today and includes nine safeguards that States should adhere to when they have not abolished the death penalty:

- they should apply it only for the most serious offences;
- the law has to clearly prescribe this punishment, and in case of doubt, the accused should benefit;
- that death penalty should not be applied to children, to pregnant women, to new mothers and to persons who have become insane;
- that the guilt of the person should be proven beyond any doubt;
- that all the guarantees of fair trial are respected, including the right to legal assistance at all stages of the proceedings;
- the right to appeal should be respected;
- the right to seek pardon or commutation should be respected;
- the execution of sentence should be suspended when appeal or request for pardon or commutation is pending;
- it should inflict the minimum suffering.

Unfortunately, as the 2010 report of the Secretary General on Capital Punishment[19] clearly shows, States still infringe on these principles and do not apply them as strictly as would be required in light of the severity of this punishment and its irreversible effects.

In addition to the Safeguards, the entire body of Standards and Norms includes relevant principles on the issue of the death penalty. Here are a few examples:

[17] Adopted by ECOSOC resolution 2005/20
[18] See at http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings-legal-aid-2011.html
[19] Report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (E/2010/10), available at http://www.unodc.org/documents/commissions/CCPCJ_session19/E2010_10eV0989256.pdf

The Standards Minimum Rules on **the Treatment of Prisoners** apply to prisoners on death row and therefore require that while they are awaiting their execution, they should have the same rights as other prisoners.

The Model Treaty on **Extradition** includes as a ground for refusal of extradition the possibility that the death penalty shall be imposed in the requesting state.[20]

The United Nations Standard Minimum Rules for the Administration of **Juvenile Justice** (the Beijing Rules)[21] establish that capital punishment shall not be imposed for any crime committed by juveniles. According to Amnesty report of 2010,[22] six countries continued to execute offenders that were children at the time of the commission of the offence. According to other resources, this was sometimes accompanied by an attempt to hide the real age of the person. According to Human Rights Watch, in 2010 there were more than 100 children on death row.[23] A complete stop of execution of children could save as many lives.

The Basic Principles on the Role of Lawyers[24] reiterate the importance of legal assistance in capital punishment cases, as do the proposed Draft principles and guidelines on access to legal aid. I will revert to this shortly.

The declaration of Basic Principles of Justice for **Victims of Crime** and Abuse of Power requires that States allow the views and concerns of victims to be presented and considered at appropriate stages of the proceedings.[25] Currently, there are several victims organizations in the US that are very vocal in their opposition to the death penalty,[26] as it creates suffering during long years of appeals that do not allow closure and appropriate support to the families.

---

[20] United Nations Model Treaty on Extradition (A/RES/45/116). Article 4 establishes Grounds for refusal: Article 4*(d)* reads: "If the offence for which extradition is requested carries the death penalty under the law of the requesting State, unless that State gives such assurance as the requested Sate considers sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. Where extradition is refused on this ground, the requested State shall, if the other State so requests, submit the case to its competent authorities with a view to taking appropriate action against the person for the offence for which extradition had been requested; "

[21] Adopted by the General Assembly in resolution A/RES/40/33.The relevant part reads:"The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights"

[22] Death Sentences and Executions 2010, available at www.amnesty.org

[23] See at http://www.hrw.org/news/2010/10/09/iran-saudi-arabia-sudan-end-juvenile-death-penalty.

[24]Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. The preamble include the following paragraph: "*Whereas* the Safeguards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights".

[25] Adopted by the General Assembly Resolution A/RES/40/34. See paragraph 6(b).

[26] For example: Murder Victims' Families for Human Rights (MVFHR) at www.mvfhr.org, Journey of Hope – from Violence to Healing, at www.journeyofhope.org.

Another important source are the **Guidelines for the Prevention of Crime**[27] - an issue which lies at the heart of the death penalty debate. If the Guidelines are followed, governments would need to base their strategies on a broad, multidisciplinary foundation of knowledge about crime problems. This knowledge should include the different studies on the death penalty. Without going into the discussion on deterrence, it is worth mentioning that data from the United States of America shows that murder rates in death penalty states are higher than in non-death penalty states.[28]

In States that have gone through the process of seriously learning about the issue and conducting thorough studies, the final result was that they were convinced of the futility of applying the death penalty in terms of the different goals of punishment. **James Abbot**, Chief of police in West Orange, New Jersey, was a member of a commission to study the death penalty. Six months of study resulted in the conclusion that the reality of applying the penalty is a failure, and as he testifies, "opened his eyes". The members of the commission concluded that costs of execution are larger than of life without parole, and it was shown it does not serve any crime prevention goal.[29] The money saved on the costs of the death penalty could be invested in effective crime prevention programmers.

Finally, I would like to focus on the importance of the right to legal assistance at all stages of the trial and its potential impact in death penalty cases.

As I mentioned, next week a group of experts will review a draft new instrument on the right to legal aid. This instrument reiterates the right to legal aid, free of charge in cases involving the death penalty, from the moment of arrest.

The impact of an effective defense in death penalty cases is reported by many. In a recent meeting of experts on International Perspectives on Indigent Defense[30] in the US, one participant shared an example that shows the impact of effective legal defense on capital punishment: *"Virginia, which historically has had the second highest execution rate in the United States behind Texas. About three years ago, the commonwealth added regional defender offices to handle the majority of its capital cases. Interestingly, since that time, Virginia has not sent anyone to death row."* The same participant also reported that "*federal cases where substantially*

[27] Economic and Social Council resolution 2002/13, annex. Guideline 11
[28] See figures reported in 'Deterrence: States without the death penalty have had consistently lower murder rates", at www.deathpenaltyinfo.org.
[29] 4th WORLD CONGRESS AGAINST THE DEATH PENALTY, Presentation by James Abbott, Round table "Law Enforcement views on the death penalty", 25 Feb 2010, available at http://www.deathpenaltyinfo.org/documents/JamesAbbott.pdf .
[30] U.S. Department of Justice, Expert Working Group Report: International Perspectives on Indigent Defense, September 2011, at 18.

less money is spent on the defense have been shown to have a much higher likelihood of ending in a death sentence".[31]

US supreme Court judge Ruth Bader Ginsburg also commented on this issue saying:

"I have yet to see a death case among the dozen coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial... People who are well represented at trial do not get the death penalty."[32]

As a first step in the process towards abolition,[33] States that have not yet abolished the death penalty should start by adhering to the Safeguards Guaranteeing the Rights of Those Facing the Death Penalty as well as other relevant standards and norms. At the minimum, this will bring about a significant reduction in the numbers of executions globally, and at the maximum will develop criminal justice systems that are fair, effective and humane.

[31] Ibid.
[32] Ruth Bader Ginsburg, U.S. Supreme Court Justice, April 9, 2001.
[33] In line with the General Assembly resolutions 62/149, 63/168, 65/206 entitled "moratorium on the use of the death penalty".

Islam and the Death Penalty

William Schabas[34]

The debate about the imposition of capital punishment may be as old as the supreme penalty itself. The circumstances of its imposition and administration, as well as the wisdom of its use altogether, have preoccupied jurists, scholars, philosophers, and theologians for many centuries. This debate has been transformed, in the last half of the twentieth century, with the injection of a new element, the international law of human rights. Initially addressing the issue implicitly, with the proclamation of the right to life and the prohibition of cruel, inhuman, and degrading treatment or punishment, in articles 3 and 5 respectively of the 1948 Universal Declaration of Human Rights, the law has steadily and inexorably developed in this area. By the end of the twentieth century, some sixty states had ratified international treaties prohibiting capital punishment, and the issue itself had become one of the pre-eminent debates in such important international forums as the General Assembly of the United Nations and the Rome Conference on the International Criminal Court.

International legal developments were, of course, nothing more than the reflection of changes in national practice. According to the latest report of the Secretary-General of the United Nations on the subject of capital punishment, issued in March 2000, seventy-four states are now totally abolitionist, thirty-eight are de facto abolitionist, and eleven are abolitionist for ordinary crimes. A total of 123 states are included in one of these three categories. By comparison, only seventy-one states are listed by the Secretary-General as being retentionist. According to the Secretary-General, forty-six states have abolished the death penalty since 1985. … Within the international arena, those states taking the initiative to defend capital punishment are a disparate lot. The group includes such states as Singapore and Malaysia, who invoke "Asian values" and whose practical concerns on the matter seem closely related to the battle against traffic in narcotic drugs. Another active participant is Rwanda, a country where the death penalty has fallen into abeyance except for the very specific issue of the appropriate punishment for perpetrators of genocide. Several members of the Commonwealth or English-speaking Caribbean are very involved: they generally attribute their interest in the subject to the excited state of public opinion and, in some cases, high rates of violent crime. But without any doubt, the core of the campaign that fights further progress of international law in the area of abolition of the death penalty lies

[34] Article published originally in William A. Schabas, *Islam and the Death Penalty*, 9 Wm. & Mary Bill of Rts. J. 223 (2000), http://scholarship.law.wm.edu/wmborj/vol9/iss1/13. Reproduced here with the permission of the author. Professor William A. Schabas is the Chairman of the Irish Centre for Human Rights at the National University of Ireland, Galway. He is also an Associate Professor at the University of Middlesex in London and a *professeur associé* at the Université du Québec à Montréal.

with so-called Islamic states. Geographically these countries are located in the Middle East—the state with the largest Moslem population in the world, Indonesia, plays no role in the debate—and have governments characterized by repressive, undemocratic policies in a wide range of areas. This group includes two of the world's leaders in the practice of capital punishment, in a quantitative sense, namely Iraq and Iran.

This bloc of Islamic states quite regularly and vocally insists that its position is the inexorable consequence of Moslem law. …

Islamic Law Doctrine on the Death Penalty

A stereotypical presentation of Islam suggests that it is a conservative, misogynistic, and retributive religion. Even those with only a superficial acquaintance with the subject know better, of course. As in all religions, there are progressive and reactionary currents of thought. Even so-called "Islamic" states differ widely on many aspects of religious doctrine. Thus, in the international debates it is troubling to hear blunt pronouncements affirming that "Islam favors capital punishment," as if this view meets with unanimous and unqualified support throughout the Moslem world.

…Despite popular impressions to the contrary, Moslem penal law is characterized by a strong undercurrent of clemency and sympathy for the oppressed. Punishment is ordered to be free of any spirit of vengeance or torture.

Islam professes the basic principle that everyone has the right to life. However, this principle, stated in the Koran, allows for an exception. Killing is only allowed when a court of law demands it: "Do not kill a Soul which Allah has made sacred except through the due process of law." Therefore, this exception authorizes the administration of capital punishment when Islamic law dictates. Intriguingly, the Islamic law position would seem to be the same as that found in the Fifth Amendment to the United States Constitution and such international instruments as the European Convention on Human Rights.

Islamic law arose out of various sources, but more specifically from the teachings of the prophet Muhammad. It developed in a formal sense during the seventh and eighth centuries (670-720 AD). Its two most important elements are the Shari'a and the Fiqh. Shari'a refers to the sacred laws and ways of life proscribed by Allah. The Koran and the Sunna or Sunnah comprise the Shari'a. These are considered the most important sources of Islamic law. The Koran is considered to be the primary source of guidance because it is regarded as the spoken word of Allah. The Sunnah refers to the words and actions of the Prophet. The Shari'a is said to deal with ideology and faith, behavior and manners, and practical daily matters. It is a comprehensive body of norms covering "every aspect of life including international, constitutional, administrative, criminal, civil, family, and religion." The Fiqh, or Islamic jurisprudence, on the other hand, refers to the

legal rulings of the Muslim scholars derived from the Shariah. The Fiqh is a second important source of guidance for Islamic law.

Islamic penal law consists of four systems or categories. In the first, that of Haad or Houdoud, important crimes deemed to threaten the very existence of Islam are punishable pursuant to penalties set by the Koran itself, or by the Sunna or Sunnah. Islamic jurists consider that these sanctions are set and immutable, and conclude that the judge is left with no discretion. Houdoud crimes consist of adultery, defamation, theft, robbery, rebellion, drunkenness, and apostasy. Several Houdoud crimes are punishable by death, specifically robbery, adultery, and apostasy.

The second system, Quissas, concerns intentional crimes against the person. Its fundamental premise is the lex talionis that is, "eye for eye, tooth for tooth," and is set out in the Koran, in verse 5.32 (further developed by verse 17.33). Actually, the lex talionis appears as early as the Code of Hammurabi. Even then it was a progressive penal reform aimed at enhancing the principle of proportionality, although it is now seen as a basis for retribution. According to the Koran, it is the victim or his or her heirs who are to inflict the punishment, although they do this under the supervision of public authorities. The victims of such crimes may pardon the offender, in which case the penalty set by Quissas will not be imposed. In such cases, two other systems of crime and punishment become relevant. These are Diya, which prescribes restitution or compensation for the victim, and Tazir, by which public authorities set their own punishment and in which the judge has wide discretion. Under Tazir, public authorities may provide for capital punishment, but no religious text requires them to do so.

Under Islamic law, execution should be public in order to enhance its alleged effect of general deterrence. It is to be carried out with the sword, as a general rule, except in the case of adultery, where lapidation is employed.

Although essentially all Moslem or Islamic countries retain the death penalty in their domestic law, practice varies considerably from one to another. Some, like Iran and Iraq, are enthusiastic practitioners, while others, such as Tunisia, conduct executions in only the rarest of cases. The religious argument is invoked frequently, yet the diversity of practice would suggest there is little consensus even among Moslems as to the scope of capital punishment. For example, Sudan has taken the position that offenders may be executed for crimes committed while under the age of eighteen, "in accordance with provisions of Islamic law." Yemen, on the other hand, recently banned the juvenile death penalty, although it was argued that this step was taken "despite Islamic law." The Libyan Arab Jamahiriya recently informed the United Nations Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions, Ms. Asma Jahangir, that "the aim of the Libyan society is to abolish the death penalty."

In 1981, the Islamic Council adopted a Universal Islamic Declaration of Rights, which states: "(a) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the law." The final phrase appears to permit capital punishment and is in any case consistent with the practice of all Islamic states. The Islamic Conference has prepared a document on human rights and Islam, in which Article 2 guarantees the right to life to "every human being" adding: "il appartient aux individus, societes et Etats de proteger ce droit contre toute violation eventuelle, et il est interdit de mettre fin a une vie quelconque, sauf lorsque cela est en accord avec Ia chari'a."

The Arab Charter of Human Rights, adopted September 15, 1994, but not yet ratified by any members of the League of Arab States, proclaims the right to life in the same manner as the other international instruments. However, three distinct provisions, Articles 10, 11, and 12, recognize the legitimacy of the death penalty in the case of "serious violations of general law," prohibit the death penalty for political crimes, and exclude capital punishment for crimes committed under the age of eighteen and for both pregnant women and nursing mothers for a period of up to two years following childbirth.

Reynaldo Galindo PohI, formerly Special Rapporteur of the Commission on Human Rights on Iran, observed that "there are groups of Islamic-legal scholars and practitioners who recommend the abolition of the death penalty for political crimes on the ground that it is contrary to Islamic law. They state that the number of crimes punishable by death is limited." In October 1995, human rights activists from throughout the Arab world met in Tunis to consider the issue of capital punishment. The meeting, which featured specialists on religion, philosophy, and criminal law in Arab states, was a joint initiative of the Arab Institute for Human Rights and the Citizens and Parliamentarians League for the Abolition of the Death Penalty "Hands Off Cain," with the support of the European Community. In a declaration adopted at the conclusion of the meeting, the participants affirmed their shared "commitment to the abolition of the death penalty as a strategic move." They also stated "that within the Arab civilization and cultural background, no real impediments exist and obstruct the evolution of secular legislations in the process of setting up limits to the death penalty and abolishing it." The statement concluded with a call to Arab states to adopt the Second Optional Protocol to the International Covenant on Civil and Political Rights, which constitutes an international legal commitment not to impose capital punishment.

Can Islamic Law Evolve?

Conservative Islamic states fighting to retain capital punishment use religious arguments in order to force the debate into one of cultural or religious norms, where it appears that one set of moral values is being imposed upon another in a form of philosophical or cultural imperialism. The argument is disarming for many who oppose capital punishment in the "North," and seductively demagogic for those who oppose it in the "South." Of course, the Bible also contemplates capital punishment for such crimes as magic, violation of the sabbath, blasphemy,

adultery, homosexuality, relations with animals, incest and rape. Yet Judeo-Christian jurists will rarely argue that this ancient text must dictate contemporary legal practice.

Obviously, there is some basis for the claim that capital punishment is part of Islamic law. Its scope, however, is considerably more limited than certain Islamic states like to claim in international debates. Capital punishment is a mandatory penalty under the Shari'a for only a small category of crimes. It was plainly incorrect to assert, as some Islamic states attempted during the negotiations surrounding the adoption of the Rome Statute, that there was some principle at stake, because Islamic law in no way mandates capital punishment for the crimes falling within the jurisdiction of the International Criminal Court, namely, genocide, crimes against humanity, and war crimes.

It seems unarguable that the crimes for which Islamic law mandates the death penalty—adultery and apostasy—cannot by any effort at interpretation be deemed to be the "most serious crimes" for which the death penalty may be imposed in accordance with Article 6(2) of the International Covenant on Civil and Political Rights. In interpreting the provision, the Human Rights Committee has stated that imposition of the death penalty for crimes that do not result in loss of human life is contrary to the Covenant. During its consideration of Iran's periodic report, the Committee specifically cited imposition of the death penalty for adultery as being incompatible with the country's international human rights obligations. Yet many of the vocal Islamic states have ratified that instrument without reservations concerning Article 6(2). In other words, they seem already to have Accepted international norms that are at variance with Islamic law under a strict construction. Therefore, their argument by which they must obstruct the evolution of international norms on capital punishment on religious grounds is inconsistent with their previous practice in the area of international human rights.

Throughout the development of Islam and Islamic law, there have been times when theory and practice did not coincide. While it has been argued that Islamic law governs the social order of Islamic societies, this has not prevented the Shari'a from being amended or ignored when the environment dictated. This has been referred to as darura, the doctrine of necessity. The doctrine of necessity dispenses Moslems from observing religious laws when the situation or environment dictates otherwise.

One example of this phenomenon is drawn from the realm of international relations. Islam does not recognize other non-Islamic legal systems because one of its stated goals is the spread of the Moslem faith. However, the reality of the modern international system of nations enjoying sovereign rights has prevented this from being upheld strictly. Consequently, a secular approach to "the conduct of foreign relations has been accepted by most Islamic states, whether they are completely secularized in their internal legal structure, as in the case of Turkey, or still recognizing the Shari'a as their basic law, as in Saudi Arabia and the Yemen." Some of the same conservatives who have objected to any deviations from the internal law of Islam have accepted

marked departures from traditional Moslem law governing foreign relations. It might also be noted that Islamic leaders have often opted to cooperate with foreign governments in the selection of military technology. Even the concept of holy war jihad, by which religion justifies aggressive war waged against "infidels" and "enemies of the faith," is so obviously incompatible with Article 2(4) of the Charter of the United Nations. Interestingly, at the Rome Diplomatic Conference, the Arab and Islamic states were among the most insistent for including the crime of aggression within the subject matter jurisdiction of the International Criminal Court. Yet by the same reasoning that they claim capital punishment is an inherent aspect of their religion, it might be argued that any definition of the crime of aggression should also recognize the legality of holy war. But we are unlikely to hear such an argument. …

All Islamic countries have demonstrated some degree of flexibility in the interpretation of Islamic law in these or other areas. Yet, they stubbornly refuse to acknowledge that the same approach may be undertaken with respect to the death penalty. It appears that religion is little more than a pretext to justify a resort to harsh penalties that is driven by backward and repressive attitudes in the area of criminal law.

Death Penalty - Reflections on the Iranian Situation

Dr. Jaleh Lackner-Gohari[35]

At a time when momentum is gathering across the world to abolish capital punishment, the Islamic Republic of Iran (IRI) currently ranks second for number of executions, after China, and first for per capita executions in the world[36]. References to published data by FIDH (International Federation for Human Rights) and Amnesty International are used in this paper to substantiate the situation of human rights in Iran and to refer to the particular state of capital punishment in the country, particularly in recent years. Both the severity and the number of death sentences in Iran are on the increase. A marked aggravation has been noted since the last presidential elections in June 2009. In their aftermath peaceful protests took place, organized by the Iranian civil society, individual voters and human rights activists. The protests were primarily based on individual motives. Citizens protested against election fraud and wanted their votes to be respected. The peaceful crowd had been expecting that the elections would result in a moderation of the existing social repression and lead to a gradual opening of the country. But protests were clamped down by security forces in a brutal manner. The Iranian regime has ever since put up efforts to silence the opposition and any forms of protest in a radically brutal manner. There were thousands of arbitrary arrests and imprisonments, and prisoners have been heavily tortured to intimidate and prevent them and the public from raising their voices. The categories of offenses that were formally eligible for death sentence were expanded by a few further forms of offense. The numbers of irregular executions, in the absence of any transparent trials, has also increased in the past two years. Exact figures & numbers are not known to the date.

In Iran, **capital punishment is applicable to a wide range of offences**, such as sexual offences (e.g. fornication, adultery, sodomy, lesbianism, incest, rape), drinking, theft, drug use and trafficking, murder, and numerous other offences (e.g. apostasy and cursing the prophet). 'Waging war' against People and God and 'corruption on earth' are further in the list. Further offences range from armed robbery to political opposition or espionage. A number of economic offences also qualify a person for the death sentence.

Hanging is the preferred method of execution. More than often, several offenders are hung at the same time. With regards to available data on the number of executions in Iran, which

[35] ***Das Iranishe Wien***

[36] According to the World Coalition against the Death Penalty, Iran executed at least 317 people in 2007, almost twice as many as in 2006 and four times as many as in 2005. In 2008, at least 346 executions were recorded. From January through the end of March 2009, Amnesty International has recorded 120 executions. (chart attached) These numbers are certainly below reality, since there are no publicly available statistics on executions carried out in the country (1). In December 2007 an overwhelming majority of the UN General Assembly (UNGA) member states adopted resolution 62/149 "Moratorium on the use of the death penalty" calling for a worldwide moratorium on executions. The Islamic Republic of Iran was among the 54 states that voted against the resolution. In December 2008, the IRI was among the 46 states that voted against a similar resolution; it was passed with 106 votes in favour.

is anyway likely to be underestimated, the observed global trend on decreasing numbers of capital sentencing cases cannot be confirmed for Iran. There, figures have been going up every year.

After a bloody clampdown on demonstrators, in February last year, a prominent cleric and influential policy maker in the office of the Spiritual Leader, Ali Kahmenei, justified the occurred killings of peaceful demonstrators by the security forces in a public statement and added that they (i.e. security forces) should have killed even more of "the counter-revolutionary elements". A universal state terror policy seems to be generally in place, in Iran.

Offenders sentenced to capital punishement come from all strata of the society. They may be students, reporters, lawyer and other intellectuals. As mentioned above, homosexuality, adultery and other sexual behaviors that are outside conventional norms are subject to the application of death penalty. Alleged "drug dealers" are included in the category. The term "drug dealer" has been used in a wider sense over the years, for public justification and cover-up of assaults inconvenient to the regime. This may include civic activity and/or non-conformist political or religious views and practices. It can be used to hit disfavored "minorities" claims, among which Kurds, Azeris, Khoozestanis, and Belutchis and the Iranian ethnic or faith groups across Iran. The "Offenders" are mostly young people, even minors. Mostly they belong to the poor and jobless layers of the society and constitute convenient targets. In the absence of an independent and responsible judicial system, many of these cases end up with a capital punishment sentence, titled "drug offenses". Some may be pardoned for offenses for which others are being killed. A few courageous lawyers take on to defend an odd case, if they can get the approval by the judiciary. These attorneys are not granted access to the case's files and documents. They can only act to a limited degree and within the tight frame of officially approved borders. Still, they try hard to do what they can and accomplish the impossible mission in the best possible way. Occasionally they manage to rescue a case and convert the death penalty verdict into a life sentence. Since the present Judiciary is fully loyal to the "values" of the regime, the maneuvering space for the attorneys is small. Those lawyers who had tried to exceed the given boundaries and do the defense work according to professional standards, have been accused and arrested themselves (there have been several cases in which the victim and the case lawyer shared the same prison cell!).

In Iran, **executions take place in the public space**, in the presence of a large audience. Sometimes executions are carried out secretly. More than one individual is usually hung during the same ceremony. On a single crane **some 3- 4 persons** may be hung (cranes seem convenient for the purpose since they can be placed in any public area easily and placed where they are needed.) Most of the time a few cranes are placed next to each other, all of which are in use. Secret executions are mostly practiced in the case of larger groups, inside prisons. The most notorious prison for secret executions has been **Vakilabad prison in Meshed**, during 2010/11.

As a rule, there are no **public trials prior to death penalty**. At the time of execution, a large audience gathers to watch the event. Lately, the presence of increasing numbers of minors has been noted in the audience. This seems to be encouraged and even organized. Young boys in their early teens are asked to assist with the procedure of the execution. They are ordered, for instance, to remove the footrest under the feet of the offender, at the crucial moment as the rope is placed around his neck. Then they step back to watch the body still alive and struggling, turning around on the rope-end and bouncing in all directions. This is supposed to discourage the young from committing crimes. Some video clips taken by witnesses are available and deliver the shocking evidence of this chilling event. Executions are public events that convert and reinforce an outdated cruel ritual into a present collective value. By this, the "culture" of killing publicly is preserved and regenerated. Some 20 years ago, killing of opponents was being performed, in the thousands, secretly, inside prisons (details of 1988 mass executions of opponents in prisons have only recently been revealed, by some survivors). Later on, there were the "Chain Murders". A number of writers and intellectuals, political opponents and others disappeared. They were kidnapped individually, murdered, miles away, on a quiet country road side. No consequences for the killers. The unfortunate series is referred to, in Iran's human rights history simply as the "Chain- Killings".

The recent rise in the number of executions, during 2010 and 2011, must be noted with great concern. In some cases, international voices of objection, circulated petitions and *Urgent Actions* initiated by human rights organizations and Diaspora Iranians could achieve a reversal in the death sentence and its conversion to life sentence. In many other cases such efforts had no effect on the regime's decision. The International Federation of Human Rights, Amnesty International and other human rights organizations have, over the years, called against human rights abuses and the practice of capital punishment in Iran. They have also openly objected to the cruel practice of stoning and pointed out that it has no basis in the teachings of Islam. Data delivered by these NGOs are valuable sources of reliable information. Here are the links to their information sites:

- **The International Federation for Human Rights**
  (FIDH, http://www.fidh.org/-english-)
- **Iran Tribunal** (http://irantribunal.com/English/EnHome.html)
- **Amnesty International, ME & North Africa Section**
- **Human Rights and Democracy for Iran** (http://www.iranrights.org/).

Iranian authorities often attempt to justify their practices as based on differences in cultural concept toward crime & punishment. Such argumentation has never satisfied human rights experts in any way. Arbitrary and medieval practices cannot obtain justification, by such claims. The practices are an insult to human dignity and need to be stopped, independent from the place and the culture in which they occur. Besides, they are the most inefficient way to achieve what they are supposed to do. Stop crimes. The method simply does not even work! The practice

of death sentencing has, in no way, decreased the incidence of the offenses for which it has been **applied, as a "cure".** In Iran, capital punishment has been applied for decades now, as a cure for the country's huge drug issue. Results have proven its total inefficiency and futility. Today, Iran has a greater drug problem than before, in spite of having killed numerous "offenders". But the ruling system adamantly adheres to the practice, albeit to also use it as cover to eliminate unwelcome opponents. The percentage of dealers and addicts in Iran today is much higher than ever before. Sentencing people to death has not served Iranian rulers well, as a "cure" to society's evil. The routes of the evil, more difficult to address are still present: the needs of a country with a very young population (70 % under age of 30). i.e.: employment, opportunities, social liberties, and a future without as much repression. Capital punishment has **not** been the cure for Iran's immense drug problem. Yet, they continue to apply the wrong cure, in great numbers.

Experts and advisors who were involved in the Iranian drug issues, for many years, missed the chance to make the "Cure" debate a serious point of action: state killings are not a cure for the drug problem. They could have insisted on a policy change, in exchange for their advisory and financial support, refuting the Iranian line of argument, more emphatically, over the past decades. Unfortunately, chances were missed to implement a different line of solutions, between Iran and the international community. The particular case of the relation between drugs and human rights, in the international context is not unique, but a valid example. It may be just one case out of many.

What can we learn from the above experience for other situations, interactions with a double face: **a human rights side and a social or political side**? Mediators of understanding are needed to offer better working concepts and methods. Those with one foot deep in the Meta Level of the respective country's culture; those who relate to the language, customs, tales, metaphors and the home-based positions that can work for the change process, those who, on the top of the former, are committed to universal values of human rights and democracy. Such supposedly international networks, a body of qualified and committed actors, could pave the way and come up with doable alternatives, initiate new view points in a culture that they know and can access.

Iran has witnessed the **growth of a vibrant civil society** over the past years with considerable and visible participation of women and the young generation. They all are ready for a transition from a dogmatic order to a liberal society. They seek a public space that respects the **existing diversity,** which has long been a lived reality for Iranian people. They long for civil rights and freedom in this diverse society. The dense body of this **potential for change** consists of students, very courageous young journalists, lawyers, writers, film makers and other actors, male and female, all in motion to bring about the future civil society in Iran. They constitute a meaningful force to lead the culture of change that is apt for their society. They value human rights, and will build up a different system of crime & punishment which is based on other

values. That is why they have been the front row targets of persecution, and even execution, in Iran, increasingly since the notorious presidential elections in June 2009.

Another considerable factor that could impact Iran's human rights attitude is **Europe and other industrial countrie**s that have maintain considerable **trade relations with Iran,** for many years. Even from the critical angle, it seems alright to maintain economic relations with a regime such as Iran, **if…** These quiet and profitable relationships have been in place for some decades, between Iran and countries across the world. Most of trade partners, particularly the **Europeans, are clearly commitment to human rights values**. Even for most human rights activists, it is acceptable that relations are kept alive and business deals continue, **but…** Such relation channels could (and should) have been used over the years of explicit human rights violations in Iran as **Channels of Communication to bring about change in Iran's attitude.** This has unfortunately not been the case.

Opportunities have been ample to let the business counterpart know, that civilized behavior is expected of them, as of other business partners. These potential **opportunities** were systematically **missed,** for whatever reason. Contracts and deals were processed, between economic representatives of **countries with HR** values in their belief systems and those **who went home to continue killing and torturing their citizens. We need to ask the question: why?** The initiation of an ongoing dialogue with Iranian representatives could have created a different awareness in the Iranian stakeholders, over the years. The opportunities were missed, again. A further opportunity was missed over the years, to **work with HR incentives** and to **encourage the change process in Iran's Human Rights attitude**, an inclusive approach for a sound longer term cooperation and exchange, based on shared values. Unfortunately all has been sacrificed for immediate, short term and tangible business opportunities.

The realistic chance to gradually create the grounds for abolishing capital punishment in Iran, in the global village of economic interests, should have been part and parcel of the deals with Iran, over the years. The **Iranian Diaspora & human rights groups have repeatedly expressed this point over the years**. Unfortunately short-term financial choices always overruled any clear positioning and explicit attitude of partners in these issues.

But as it was all missed, Iran had no reason to change its attitude. Its human rights record was silently accepted by the business partner, uncritically. At long last tides have turned against its own reputation, the long term interests of the country and led to political and economic isolation. Even if too late, a hypothetic question is still worth asking: would **all UN Resolutions on Iran and the tough sanction measures against the People of Iran have been spared and redundant, if a wise policy of oil for human rights had been pursued long years ago,** timely and consequently, by many global players: the economic "Friends of Iran"?

Today the situation is different. Other solutions must be sought for meaningful interaction with Iran. Still, human rights challenges that we face in Iran are of primordial importance, just as the "Nukes" issues. In order to maintain peace, a relaxed inner-Iranian human rights balance is crucial to achieve. Increased tension and violations will culminate in more indiscriminate executions, and result in the loss of more valuable human resources for the country. Yes, we indeed need to communicate with Iran. This does not mean compromising on the extensive human rights violation in the country and looking away from the never ending story of state killings. It is essential, **not to look away from death sentencing and the brutal torture (another form of exercising capital punishment in Iran's numerous prisons**. In Iran, as in other countries with similar HR attitude, the issue of death penalty can only be addressed step-by-step, if it is to succeed. This is valid, even in the face of the current international gridlock that we are witnessing. Are we ready to take on responsibility?

Inside Iran: Non-violence has emerged as a visible public concept and for the first time in Iran's history, with the emergence of the Green Movement, after the elections of 2009. This is important to remember. The Iranian civil society has come forward to change. Currently, all over the world the issue of transparency is being discussed. This is a fact to be remembered in future by the west, when dealing with Iran. New terms of relations must be defined. They must seriously allow greater emphasis on the Iran's attitude towards human rights. **"Stop-killing and I shall do business with you!"** must become the base-line of mutual understanding! **Executions should disqualify Iran as a business partner**. Is this too much to ask for in a part of the world that believes in the universality of the right to exist? Conditional incentives are likely to work better for HR improvement in Iran, than isolating and sanctioning the country. Support and reinforcement of all Iranian civil society compartments is a crucial aspect for change and improvement.

The non-negotiable first step toward abolishing the death sentence in Iran is explicitly and clearly **abandoning the cruel public aspects** of the punishments.

No more executions in front of public eyes.
No more executions of minor delinquents.[37]
No more show-executions with public participation.

Any other forms of public and human-degrading punishments should also be abandoned, such as **flogging**.

Even under prevailing circumstances in Iran, that much is doable and can be adamantly asked for. The resulting slight change in the policy will trigger a snow ball among the population.

[37] In accordance with the UNICEF Convention of the Rights of the Child of which Iran is a signatory for many years.

Situations such as this will be helpful in gradually paving the way towards abolishing capital punishment sometime in the future.

The players in Iran must be reminded time and again that the death sentence is an act of extreme violence, unacceptable in today's world. It is against human dignity in any society, for the victims, but also for those who carry out the action and abuse their power over others.

States' Obligation to Influence Public Opinion under International Law
- Capital Punishment and Public Opinion-

Heping Dang[38]

Some states that retain capital punishment argue that they do so in deference to public opinion. They treat public opinion in a neutral way, as if all that a State can do is bow down in obedience. But states in practice have long sought to influence public opinion, with regard to issues as diverse as women's rights, discrimination, human trafficking, international terrorism, adoption and child labour.[39] To influence public opinion has almost become a routine requirement when states tackle complicated social problems. The need is formally stressed in national action plans and public awareness-raising projects. For instance, "to change public opinion" is an indispensible part of Armenia's National Action Plan for Prevention of Trafficking in Persons for the Period 2004-2006,[40] and other projects like Dream-Combating Racism and Xenophobia in the Mass Media, which was supported by the Greek government.[41] The mandate to change public attitudes is widely given to traditional state departments, but also to newly established institutions. The Ministry of Labour in Mozambique, for example, was assigned to inform public opinion on child labour.[42] Other national institutes may be entrusted with the duty to address the public in their specialized field, such as the Chamber of the Council of the Government of the Czech Republic for Roma Community Affairs[43] and the National Office for Measures to Combat Discrimination in Italy.[44]

International instruments have highlighted governments' role in informing and educating public opinion. Early UN documents date back to the 1950s when international conventions on racial discrimination and discrimination against women were drafted. At that time, there were discussions regarding about how to embed such obligations in international law. Would specific measures be enough to educate public opinion as recommended by the United Nations or must they be included into international conventions in order to create binding duties?[45] Later, the second approach seems to have become dominant, as detailed steps are now accepted and

---

[38] PhD candidate at Irish Centre for Human Rights, LL.B and Master Degree of Criminal law (Beijing Normal University, China, 2007 & 2009). Her PhD is entitled "*Capital Punishment and Public Opinion*".

[39] Those states include Armenia, Australia, The Czech Republic, Ethiopia, Greece, Italy, Jordan, Mozambique, Nigeria, Slovakia, Sweden, Tunisia, Ukraine, etc. UN Doc. A/C.3/59/SR.15, para. 41, UN Doc. A/C.3/44/SR.22, para. 40, UN Doc. CCPR/C/CZE/CO/2/Add.1, para. 33, UN Doc. CRC/C/SR.1164, para. 59, UN Doc. CEDAW/C/GRC/6, ANNEX A, para. 2, UN Doc. CERD/C/ITA/15, para. 315, UN Doc. CEDAW/C/SR.805 (A), para. 33-35, UN Doc. CRC/C/41/Add.11, para. 30, 473, 474, UN Doc. CRC/C/3/Add.29/Rev.1, para. 154, UN Doc. CERD/C/419/Add.2, para. 53, UN Doc. CRC/C/125/Add.1, para. 417, UN Doc. A/CONF.189/PC.1/8, para. 65, UN Doc. A/57/183, para. 164, UN Doc. A/C.3/50/SR.28, para. 51.

[40] UN Doc. A/C.3/59/SR.15, para. 41.

[41] UN Doc. CEDAW/C/GRC/6, ANNEX A, para. 2.

[42] UN Doc. CRC/C/SR.1164, para. 589.

[43] UN Doc. CCPR/C/CZE/CO/2/Add.1, para. 33.

[44] UN Doc. CERD/C/ITA/15, para. 315.

[45] UN Doc. E/CN.4/721, para. 91.

adopted by a series of multilateral treaties, including the *International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Eliminating of All Forms of Discrimination against Women, Convention on the Rights of Persons with Disabilities, and Convention on the Rights of the Child*.

State obligation to influence public opinion under international law

Under international law, states need to take a principled stand on certain issues. This means states have to condemn and change public opinion if it condones racial discrimination or discrimination against women, according to article 2 of the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Forms of Discrimination against Women*. This also means that states ought to encourage organizations and media to work in a manner that is consistent with international conventions, given, for example, article 8 of the *Convention on the Rights of Persons with Disabilities*.

To influence public opinion, states bear the responsibility to formulate a policy and undertake all appropriate measures to engage in public awareness raising, as stated in article 2, 4 and 7 of the *International Convention on the Elimination of All Forms of Racial Discrimination*, article 2, 5 and 10 of the *Convention on the Eliminating of All Forms of Discrimination against Women*, article 8 of the *Convention on the Rights of Persons with Disabilitie*s, article 17 and 29 of the *Convention on the Rights of the Child*.

Governments are accordingly obliged to supervise national education, even family education, to make sure the right signals are being given, with respect to women's rights and the rights of people with disabilities. It is underlined in international law that states have the responsibility to organize training for professionals and inform public opinion through the media and through government-sponsored information. In addition, states are entitled to adjust cultural and social norms in order to eliminate prejudice, customs, stereotyping, harmful practices and even legislation that exacerbate sex discrimination or discrimination against persons with disabilities. It is also mentioned in international documents that legal consequences have to be provided in domestic law against propaganda and organizations, yet states do not respect their internationally-enshrined rights.

State obligations regarding the death penalty under international law

A state's legal duty to influence public opinion has also been laid down in international law with regard to the death penalty.

Article 1 of the *Second Optional Protocol to the International Covenant on Civil and Political Right* requires state parties to take all necessary measures to abolish the death penalty. Moreover, all the measures aiming at abolishing capital punishment should be considered as

progress in the enjoyment of the right to life, as expressed in *CCPR General Comment No. 6* and the preamble of the *Second Optional Protocol to the International Covenant on Civil and Political Rights*. If this progress could be regarded as necessary, taking note that the right to life requires continuous effort and progressive implementation, it could be argued that the measures to change public opinion is a 'necessary step' to bring about the right to life, by invoking paragraph 2, article 2 of the *International Covenant on Civil and Political Rights* (hereafter referred to as the *Covenant*).

The evolving nature of the right to life creates, under article 40, the state parties' obligation to report. Based on the Covenant's guidelines, states are required to target negative attitudes and prejudice, raise awareness among public officials and other professionals; and to influence public opinion through educational programs, government-sponsored public information and the mass media.[46] Equivalent requests are expressed in regional treaties as well. Article 25 of the *African Charter on Human and People's Rights* indicates that states have a duty to promote human rights through teaching, education and publication. Furthermore, article 26 of the *American Convention on Human Rights* obliges state parties to adopt measures to achieve progressively implicit human rights, although the article was written in the context of economic, social and cultural rights. Moreover, similar arguments can be found under the international law regarding cruel, inhuman or degrading treatment. Under article 10 of *Convention against Torture and Cruel, Inhuman or Degrading treatment* and according to *CCPR General Comment No. 20* and the guidelines for article 40 of the *Covenant*, states are expected to disseminate relevant information to the population at large and to do so particularly among legal professionals.[47]

Bearing in mind states' obligations to influence public opinion, governments should therefore take up their duty to change people's attitudes towards the use death penalty, instead of using public opinion as a justification or excuse to refuse or delay the abolition of the death penalty.

A recent discussion in mobilizing public opinion

The media's educational function is usually emphasized by international instruments and by good domestic practice as an effective way to mobilize public opinion There was an interesting discussion during the conference, sparked by a Chinese television program *Interview before Executions* (临刑会见). This programme attracts a big audience, yet its influence is mainly restricted in the Henan province, where the programme is broadcast. Hoping to prevent future crimes, journalist Ding Yu interviews death row inmates about their actions, any remorse and motives they have. Professionals including judges are invited to comment on the cases and provide suggestions about how to avoid such tragedies through psychology, sociology, and

[46] UN Doc. HRI/GEN/2/Rev. 6, Chapter I, para. 43.
[47] UN Doc. CCPR/C/2009/1, para. 50.

education. Therefore, it has no intention whatsoever to go into the whys and wherefores of abolishing capital punishment. It might be beyond the capacity of people who are making such programs, to answer the real question as to whether crimes could be prevented by watching such interviews, or by any other means. Whether or not these programmes offer an honest and unbiased analysis remains a point for further discussion. This is illustrated by the self-description of the journalist, Ding Yu, who considers herself neither angel, nor devil, but a witness to the final journey that the death row inmates make.

As mentioned before, this program barely gets to the essential questions of the death penalty issue, such as the inevitable possibility of applying it to innocent people, the death row phenomenon, whether it deters crime and whether China should remain a retentionist state. Compared to the populist interviews, news media and jurists are in a better position to deal with these questions and encourage public debates on the death penalty. News media could be influential in forming public opinion. In many countries, the support level for the death penalty could decline significantly when innocent people are reported to have been condemned to death, but increase dramatically if a horrifying murder case came along, where China is no exception. However, there is one distinct feature of China's movement towards the abolition of capital punishment. That is, jurists play a crucial role in facilitating this process, because of their considerable influence among the public and decision makers. For example, they are greatly involved in drafting and passing the *Eighth Amendment of Criminal Law* where the death penalty was removed for 13 crimes, and the current criminal policy *Temper Justice with Mercy*, which provides guidelines on restricting capital punishment. Among Chinese academics there is already an agreement that the death penalty should be abolished in total.

Things may not be changed overnight; however, the complete abolition of death penalty in China could be achieved through continuous efforts, on the part of government, mass media, jurists, and other stakeholders.

Zussamenfassung

Nach der Meinung vieler Staaten ist die die Abschaffung der Todesstrafewegen der entgegenstehenden öffentlichen Meinung nicht möglich. Um diese Meinung zu erheben, bedienen sich die damit befassten Regierungen verschiedener Instrumente. Beispielsweise wurde in Irland das Volk vor der verfassungsmäßigen Abschaffung der Todesstrafe befragt, während In den Vereinigten Staaten intensiv Meinungsumfragen durchgeführt wordensind. Laut einer solchen Studie des Gallup-Institutes, die im vorigen Monat erhoben worden ist, ist die Zustimmung in den USA zur Todesstrafe auf den niedrigsten Stand seit 1972 gefallen. Während 1994 noch 80 Prozent eine solche befürwortet haben, sank dieser Wert auf lediglich 61 Prozent.

Die Regierung der Volksrepublik China erhebt die öffentliche Meinung hauptsächlich über das Internet und hier vor allem über den Mini-Blog Wei Bo, auf den über 200 Millionen

Nutzer zugreifen. Diese, auf Basis des Internet ermittelte, öffentliche Meinung übt teilweise großen Einfluss auf die Rechtsprechung in Prozessen, in welchen die Todesstrafe gefordert wird, aus.So berücksichtigten etwa zwei diesjährige Todesurteile, beide folgten auf Prozesse mit hoher öffentlicher Anteilnahme und betrafen Yao Jiaxin bzw. Li Changkui, in hohem Maße die ermunternden Zurufe aus dem Internet. Andererseits finden sich auch große Fälle, in welchen das Urteil der öffentlichen Stimmung widersprach, aber nach Verkündigung akzeptiert wurde, wie etwa in den Fällen Li Jingquan und Sun Weiming geschehen.

Aus diesem Blickwinkel ist also festzustellen, dass öffentliche Meinung gesteuert werden kann und zwar nicht allein von Gerichten sondern auch durch Regierungen. Die Erfolge von Regierungen, die Öffentlichkeit zu erziehen, informieren und auszubilden und vorherrschende Meinungen zu ändern sind in verschiedensten Bereichen – von Frauenrechten, Diskriminierung, Menschenhandel, internationalem Terrorismus, Kinderarbeit bis zu Adoption – eindrucksvoll nachgewiesen worden. Um dies zu erreichen, wurde erfolgreich eine Reihe von Maßnahmen in Verbindung mit landesweiten Projekten und Strategien zur Sensibilisierung der Bevölkerung entwickelt. Manche dieser Maßnahmen fanden Eingang in internationale Übereinkommen und wurden so für die Vertragsstaaten verpflichtend. Zu nennen wären beispielsweise die UN-Konvention gegen Rassismus (Internationales Übereinkommen zur Beseitigung jeder Form von rassistischer Diskriminierung), die UN-Konvention zur Beseitigung jeder Form von Diskriminierung der Frau, die UN-Konvention über die Rechte von Menschen mit Behinderungen oder die UN-Konvention für die Rechte der Kinder. Bezüglich der Todesstrafe finden sich selten Staaten, die ähnliche Maßnahmen ergreifen, weshalb es hilfreich wäre, eine dahingehende Verpflichtung völkerrechtlich zu verankern.

Zu beginnen wäre mit Paragraph 2 Artikel 1 des zweiten Fakultativprotokolls des UN-Zivilpaktes (Second Optional Protocol tothe International Covenant on Civiland Political Rights): gemäß dieser Bestimmung sind die Vertragsstaaten aufgefordert, alle notwendigen Maßnahmen zu ergreifen, um die Todesstrafe abzuschaffen. Weiters muss der UN-Zivilpakt selbst erwähnt werden, der das Recht auf Leben zum Leitbild erhebt und kontinuierliche Anstrengungen und stufenweise Umsetzung fordert. All diese Maßnahmen, die auf die Abschaffung der Todesstrafe abzielen, sollten, entsprechend der allgemeinen Erläuterung Nr. 6 des UN-Zivilpakte und der Präambel des zweiten Fakultativprotokolls, als Fortschritt zum Genuss des Rechtes auf Leben aufgefasst werden. Wenn es uns gelingt festzulegen, dass diese Entwicklung notwendig ist, könnte Paragraph 2 Artikel 2 des UN-Zivilpaktes geltend gemacht werden und man somit argumentieren, dass Maßnahmen zur Beeinflussung der öffentlichen Meinung ein „notwendiger Schritt“ sind, um das Recht auf Leben, wie es im Zivilpakt verankert ist, zu verwirklichen.

Die Natur des Rechts auf Leben erklärt auch Artikel 40, die Berichtspflicht der Mitgliedstaaten. Gemäß diesen Grundsätzen sind die Vertragsstaaten aufgefordert, auf negative Einstellungen und Vorurteile einzuwirken, Exekutivorgane und andere Ausführende zu sensibilisieren und die öffentliche Meinung mittels Bildungsprogrammen, von der öffentlichen

Hand unterstützen Informationskampagnen und die Massenmedien zu beeinflussen. Ähnliche Anliegen fanden bereits in regionale Vertragswerke Eingang. Artikel 25 der Afrikanischen Charta der Menschenrechte und der Völker deutet an, dass Staaten verpflichtet sind, durch Bildung und Veröffentlichungen die Menschenrechte zu fördern. Und Artikel 26 der Amerikanischen Menschenrechtskonvention ordnet den Vertragsstaaten implizit an, Regelungen zur zu verabschieden, welche Schritt für Schritt die Menschenrechte zu garantieren, auch wenn in der Bestimmung wörtlich von wirtschaftlichen, sozialen und kulturellen Rechten die Rede ist. Wenn auch nicht automatische Folge, führt die Todesstrafe oft zu Folter oder unmenschlicher bzw. erniedrigender Behandlung. Deshalb kann man von Staaten erwarten, relevante Informationen über Artikel 10 der UN-Konvention gegen Folter, die allgemeine Bemerkung Nr. 20 und die Richtlinien für Artikel 40 des UN-Zivilpaktes an die Bevölkerung und im speziellen an Juristen weiterzugeben.

Zusammenfassend ist zu sagen, dass Staaten erfolgreich daran arbeiten, die öffentliche Meinung betreffend Themen wie Diskriminierung, Frauen, Kinder und Bürgerrechte zu verändern. In Bezug auf die Todesstrafe bleibt festzuhalten, dass für Staaten, die wirklich denken, die öffentliche Meinung wäre Grund genug, an der Todesstrafe festzuhalten, es an der Zeit ist, ihrer Verpflichtungnachzukommen und diese Meinung zu beeinflussen.

Abschließend möchte ich noch auf eine Frage in Bezug auf die chinesische Fernsehsendung *Interview BeforeExecutions* eingehen. Diese Interviews sind von Chinesen, vor allem in der Provinz He Nan, verfolgt worden, ohne dabei aber Einfluss auf nationaler Ebene zu erreichen. Zumindest hat es keine großen Teile des chinesischen Volkes berührt oder eine öffentliche Diskussion über die Abschaffung der Todesstrafe angeregt. Die Absicht der Journalistin Ding Yu und ihres Teams ist es, zukünftige Verbrechen zu verhindern. Sie wählen dazu die Vorgehensweise, mit zum Tode Verurteilten über das Entstehen ihrer Motive zu sprechen und mit Experten Möglichkeiten zu analysieren, solch fatale Handlungen zu vermeiden. Obwohl offen bleibt, ob diese Interviews diesem Ziel dienen können, sind Ding Yus Gespräche mit Todeskandidaten ehrlich und unvoreingenommen.Ihre Selbsteinschätzung dürfte wohl zutreffen, dass sie weder Engel noch Teufel, sondern Zeugin und oft letzte Person ist, die diese Verurteilten treffen. Jedenfalls ist es wichtig festzuhalten, dass dieses Format die wichtigen Fragen bezüglich der Todesstrafe nur am Rande streift, wie etwa das unvermeidbare Risiko, die Todesstrafe auch an unschuldigen Menschen zu vollziehen, das Todeszellensyndrom und ob China ein rückschrittliches Land bleiben soll. Freilich haben Nachrichtenmedien und Juristen eine gewichtige Rolle bei der Enthüllung solcher Probleme gespielt und so zur öffentlichen Diskussion über die Todesstrafe ermutigt. Es muss auch festgehalten werden, dass diese beiden Gruppen verschiedene Zugänge zur Thematik haben: Während Medien den Fokus eher darauf legen, unschuldige Personen vor einer ungerechtfertigten Verurteilung zu schützen, haben sich chinesische Juristen bereits ein Abkommen geeinigt, die Todesstrafe gänzlich abzuschaffen.

"THOU SHALL NOT KILL"
(Decalogue V, 1987, Krzysztof Kieślowski, Director and Script-writer)

Slawomir Redo[48]

Save for the last few scenes, there is really nothing abolitionist in this movie. And even those scenes can be interpreted in a retentionist manner. While at the first glance the movie's balance is rather equivocal, leaving the viewer to his/her own conclusions concerning the right to life, it is, as matter of fact, an ascetic visualization of the murder and the death sentence that makes an impact on the choice of answer. First, but seemingly only, that choice meets the retentionist view: "just deserts" (revenge) well served! Second, however, the State officials obliged to deliver justice or only to witness routinely the execution find their duty incompatible with their moral standards. How come? Kieślowski does not answer this question. Popular retentionist sentiments neither. We all know that a State can kill, but should it or may it be an institutional routine killer like an individual murderer can be, even if it wants to set an example which, in fact, cannot deter other killers?

The International Covenant on Civil and Political Rights has the objective of the eventual abolition of death penalty in the world. It places on the countries that ratified it the obligation to meet this end. Even more pronounced is the Covenant's Second Optional Protocol. Through it countries declare that they will not introduce that penalty, save when at the time of ratification or accession they provide for its application in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

On the other side, there are many handy and expeditious retentionist arguments. They sometimes are incompatible with one another (e.g. advocating the right to life by prohibiting abortion, but not death penalty or advocating death penalty when homicide level is low). Hence, there is no sense to continue the pros and cons debate on their strength and the "morality of revenge", even in the face of the most atrocious killing and the murderer's apathy. Instead of morally inferior apathy and revenge, there should be the emotionless morally superior response of a State and its citizens. This is their moral authority vested through the interstate Covenant and the United Nations. That kind of authority should facilitate to abolish the death penalty.

The United Nations has never authorized in its law the use of death penalty, domestically legal or, de facto, extrajudicial, summary or arbitrary. Death penalty is really unjustified on any basis. In all cases it violates the right to life. That's why in the final scene of Kieślowski's film the cry of the about to be executed is so moving. It resounds in our conscience as it did in the officials' mind compelled to act to the contrary.

---

[48] Dr. iur. habil. Sławomir Redo is a professor of Criminology, Łazarski University (Warsaw, Poland), Visiting Lecturer/Privatdozent at the Institute for Criminal Law and Criminology, Faculty of Law, University of Vienna, Austria and former United Nations Senior Crime Prevention and Criminal Justice Expert

This message in Kieślowski's movie is universal. It addresses the Occidental and Oriental viewers alike, in line with what he said in 1991 from the perspective of his home country: "[As Poles], we have a deeply rooted conviction - which we thoroughly enjoy – that we are the most important in the world and that everybody knows it. I have understood quite a while ago that this is absolutely not true; that people in the world do not care about Poles… They are not at all interested in the Polish history, Polish suffering and our wrestling in the Polishness, in our heroism and so on. They do not care about this because everybody in the world has their own problems… So the only chance for understanding each other is not finding [in my films] what Polish is, but finding in Poles what concerns everybody in the world, and finding in the people of the world what concerns the Poles*"*.[49]

No wonder that for the vision included in his movies he received awards across Europe and in Latin America. In this context, I wish to thank the *Polnisches Institut Wien*, and, in particular, Ms. Justyna Golińska, Director, and Ms. Magdalena Bielecka, Programme Officer, for revisiting the above through Kieślowski's movie. His philosophical view, thanks to which we can better understand "*Thou Shall not Kill*" was helpful for the abolition of the death penalty in Poland. Kieślowski's work is also a contribution to further progress in the world on the enjoyment of the right to life.

Zussamenfassung

Auf den ersten Blick gibt sich der Film mehr zweideutig denn kritisch der Todesstrafe gegenüber und überlässt dem Zuschauer zu urteilen. Die moralische Widersprüchlichkeit, die der Todesstrafe inne wohnt, und den doch kritischen Zugang des Films eröffnen sich erst bei genauerem Hinschauen durch die schonungslose Darstellung der Opfer und der Ausführenden.
Die Botschaft, die Kieslowski an die Welt richtet, fasste er 1991, auf sein Heimatland bezogen, zusammen: „Es wäre falsch zu glauben, dass jeder auf der Welt sich für Polen interessiert. Da jedes Volk seine eigenen Probleme hat, kann man aus meinen Filmen nur dann ein gemeinsames Verständnis gewinnen, wenn man nach allgemeinen Aspekten der polnischen Situation sucht und nicht nach spezifisch polnischen Problemen."

[49]S. Zawiślański(2007), *Kieślowski. Życie po życiu. Pamięć (Kieślowski. Life after Life. Remembrance)*, Wydawnictwo Skorpion, Warszawa

III. Report Vienna Conference on the Abolition of the Death Penalty

Organized by ACUNS in cooperation with the Vienna Regional Court for Criminal Cases, the Ludwig Boltzmann Institute of Human Rights, Das Iranische Wien, Amnesty International and the Polish Institute of Vienna, November 2- 13, 2011

Maria Loredana Idomir

The series of events debuted on November 2 in the morning with a memorial service in the former Execution Room at the Vienna Regional Court, held by **Meinrad Pieczkowski**, Catholic Prison Pastoral Assistant. This was followed by the presentation of the memorial plaque for executed resistance fighters made by ACUNS intern **Anna Scheithauer**. In the afternoon, author **Wilhelm Weinert** presented his book, "*Mich koennt ihr loeschen, aber nicht das Feuer*" ("*You can silence me, but not put out the fire*"). A discussion with the victims and witnesses of the Nazi justice took place afterwards.

On November 7, at the Vienna Regional Court for Criminal Cases a guided tour of the exhibition "*Art and Law*" was conducted, including the works of **Gustav Just**, **Franz Pinzenoehler**, **Barbara Rantasa** and **Prof. Ernst Bruzek**, followed by a cembalo concert by **Krzysztof Weronowski-Ptaszynski**. **Dr. Alfred Waldstaetten** (Privy Councilor of the High Administrative Court) also gave a lecture on "*The History of the Grey House* (Court building)".

The discussion on November 8 was preceded by a tour of the *Eichmann Exhibit* at the Justice Palace. **Pres. Mag. Friedrich Forsthuber** of the Vienna Regional Court for Criminal Cases welcomed the participants and thanked the organizing partners. The keynote speech was delivered by **Dr. Roland Miklau**, from the Austrian Commission of Jurists and Former Director General of the Austrian Ministry of Justice. He started by paraphrasing Albert Camus by saying that death penalty destroys the last bit of solidarity among men, against death, and went on to present Austria's history with regard to the death penalty, emphasizing key legislative developments.

The ensuing discussion was moderated by **Dr. Michael Platzer**, Head of the ACUNS Vienna Liaison Office. **Prof. Frank Hoepfel**, Ad Litem Judge (International Criminal Tribunal for Former Yugoslavia) and professor at the University of Vienna, spoke on the evolution of international criminal law and human rights in the past decades. In his view, death penalty is nothing short of a totalitarian punishment and has no place in a democratic system. Attaining high human rights standards will be difficult, as long as death penalty is still in use.

Mag. Heinz Patzelt, Secretary General of Amnesty International Austria, noted that the abolition of death penalty is the sole segment in the wide spectrum of human rights issues, where

considerable progress has been made. He considered death penalty to be an absurd punishment and underlined that Europe should not lay back in its efforts towards the universal abolition of death penalty. Among the European states, Belarus is yet to abolish it. Mag. Patzelt then listed three categories of states that still use death penalty as punishment. First come those states which use death penalty as a terror instrument against political opponents (Saudi Arabia and Iran). Second, no matter how expensive capital punishment is for the legal system, it is retained to satisfy the pain and desire for revenge of the victim's family (U.S.). Third, it is argued that without it, the legal system would break down (China).

Winfried R. Garscha, Co-Director of the Austrian Research Center for Post-War Trials, addressed the question of fallen tyrants and dictators, taking as most recent the example of Muammar Gadaffi and that of Hitler. Though the first was killed by a fanatic and the later committed suicide, in the eyes of the rest, having them sent to prison was unimaginable. Despite their crimes, they should have been tried.

Mag. Harald Seyrl, Director of the Criminal Museum Vienna, chose not to speak on the legal, abstract form of the death penalty, but the practice of it. He then talked about Austria's history in using death penalty, starting with the 19th century and ending with the 1950s. During the late 19th century, the Monarchy hardly ever used death penalty. There were even cases, where through public support the conviction was cancelled. World War I and the judgments of the military courts led to an increase in the use of capital punishment. After 1919 it was very rarely used, but with the coming of the national-socialists to power in 1933 its importance increased. The case of Martha Marek, who poisoned her family, was used by the national-socialists to "reintroduce" the guillotine, which was considered an "innovation", a human-killing-machine, till the end of World War II. Death penalty was nothing else than a political instrument, within the background of a spurious legal system. The last case which resulted in capital punishment was judged in 1950 in Vienna and marked the end of the executioner profession.

Jens Erik Sundby, Senior Legal Advisor at the Office of the Director General of the United Nations Office in Vienna (UNOV), made reference to the activity of the United Nations Office on Drugs and Crimes (UNODC), in particular to where death penalty is used in drug-related cases. He mentioned the research being done on comparing justice norms in different cultural contexts. The main task of the UNODC regarding the abolition of death penalty is to increase awareness of human rights, in particular by cooperating with NGOs.

Zaved Mahmood, Human Rights Officer within the Rule of Law & Democracy Section of the UN Office of the High Commissioner for Human Rights, pointed to existing legal instruments on the abolition of the death penalty: the *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty* (1989), *Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights") Concerning the*

Abolition of the Death Penalty and *Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) Concerning the Abolition of the Death Penalty in all Circumstances* (2002). He emphasized that all states should cooperate on this subject and drew attention to the petition submitted to the European Commission by a world-coalition of NGOs, including Penal Reform International, to interdict the export of drugs used in the automatic drug injection systems for the purpose of execution of human beings by the administration of a lethal chemical substance.

The last contribution on the panel was made by **Marta Muñoz de Morales Romero** and **Manuel Maroto Calatayud**, representing the Academic Network for the Abolition of the Capital Punishment and directors of the documentary "*Still Killing*". **Dr. Michael Platzer** introduced the film and spoke about the fundamental right to human life, underlining that the abolition of death penalty is a long process that can only take place after a national debate. Stakeholders need to be urged to provide necessary information. However, this can be challenging, especially in countries where secrecy surrounds capital punishment. **Manuel Maroto Calatayud** talked about the history behind producing the documentary. It was more of an experiment, rather the product of professional movie makers, conducted by PhD candidates and researchers in international criminal law. The aim of the film is to focus on the importance of the academia in the debate concerning the abolition of the death penalty. The documentary was produced as a follow-up to the meeting of the World Coalition against Death Penalty in Madrid (2009). A series of interviews was conducted and based on them the documentary was produced. The full series of interviews can be watched on: http://www.academicsforabolition.net/index.aspx?id_entrada=19. **Marta Muñoz de Morales Romero** underlined the importance of the documentary as a tool for teaching, able to reach different political and social milieux. It encourages the debate on the abolition of the death penalty, as well as a critical reflection on it. The film starts off with the outright opposition to death penalty, goes on into the history of the use of capital punishment and emphasizes the role of thought in changing societies. The end-purpose is to delegitimize the pro-death penalty discourse, and thus promote and strengthen awareness on the universal abolition of death penalty.

On November 9, the international participants were the guests of **Ambassador Helmut Boeck**, Permanent Representative of Austria to the United Nations in Vienna, a great networking opportunity, for the different international campaigns. This was followed by a tour of the *Holocaust exhibition* at the Documentation Center of the Austrian Resistance (http://www.doew.at/) and *Hotel Metropole*, former headquarters of the Gestapo in Vienna.

The series of events continued in the afternoon, in the Grand Jury Court Room of the Vienna Regional Court for Criminal Cases with a short screening of the documentary **"***Still Killing***"** and a presentation by **Dr. Jaleh Lackner-Gohari** (**Das Iranische Wien**) on death penalty in Iran. Dr. Lackner-Gohari underlined that, at the present time, it was impossible to put Iran and other countries in the same category. The issue of death penalty in nowadays Iran is in

terms of quantity and quality exorbitant. A state terror policy in this regard is in place. She then proceeded to illustrate how victims are taken from all categories: intellectuals, often persons from poor layers of the society (accused to be drug dealers), and mostly young people, not excluding minor delinquents. In the absence of an independent and responsible judiciary system, same cases may end up with a verdict of execution, others be pardoned. Homosexuality is subject to death penalty. Executions take place mostly publicly, 3, 4 persons or more are hung on cranes, next to each other. Group executions were taking place secretly in large numbers in some prisons like the Vakilabad- Meshed prisons. There were no trials for the accused. Iran is probably at present the only country where many executions are carried out publicly and in front of a large audience. In order to kick the stool under the person to be executed, someone from the audience is asked to assist. Lately young boys in their early teenage have been asked to do this job. A public culture of official murder is being created. Killing of opponents on rural roads, but also outside the country has a dramatic history in Iran in the late decades. It should be a matter of high concern that the number of executions has gone up in 2010 and 2011. Dr. Lackner-Gohari also pointed out to efforts, petitions and urgent actions initiated by international human rights organizations, particularly by Amnesty International. The International Federation of Human Rights is a reliable source of information and calls for support against human rights abuses in Iran and capital punishment and stoning respectively. As sources, she recommended: **The International Federation for Human Rights** (FIDH, http://www.fidh.org/-english-), **Iran Tribunal** (http://irantribunal.com/English/EnHome.html) and **Human Rights and Democracy for Iran** (http://www.iranrights.org/).

A podium discussion on **"***Completing the task: towards the universal abolition of the death penalty"* followed, chaired by **Hannes Tretter**, Director of the Ludwig Boltzmann Institute for Human Rights. He introduced the participants and gave the floor to **Prof. William Schabas**, Chairman of the Irish Center for Human Rights at the National University of Ireland, Galway, who delivered the keynote address. Prof. Schabas underlined that the abolition of the death penalty is a central issue in the current human rights discourse and mentioned existing legal instruments, such as the *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty* (1989) and *Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights") Concerning the Abolition of the Death Penalty*. As compared with other human rights issues, the abolition of capital punishment holds the advantage of being able to be studied in a quantitative way. He then emphasized the constant progress being made and the steady increase in the number of countries that have abolished death penalty. Since the 1960s the UN has been publishing 5-year reports on this issue, the last of which was in 2009. Whereas in 1974 there were still around 120 countries that still used capital punishment, nowadays just 58 actively use it. In his view, the life of the death penalty will be short. South Africa and Russia were given as examples for the rather quick abolition of the death penalty, despite the doubtful public opinion regarding it. Iran and Saudi Arabia were noted as exceptions, since death penalty will be abolished here only as a consequence of a change in the political

regime. Whereas abolitionist states are concerned, Prof. Schabas drew a distinction between those states that have abolished capital punishment *de facto* and *de jure*. For most of them, only the latter applies, since it is believed that the occurrence of a terrible crime would be sufficient to rally public support for the reintroduction of the death penalty by a demagogue politician. The abolition of the death penalty must be consistent and permanent, both *de facto* and *de jure*. In this sense, the engagement of lawyers and the civil society is crucial. Making a global survey of the practice of death penalty, Prof. Schabas noted that death penalty has virtually disappeared in Europe (with the exception of Belarus). In the Americas, in the U.S. (quite widely supported by the public opinion and seen as a vital part of the legal system) and in Jamaica it is still in practice, although, truth be told, juries are more and more reluctant to sentencing people to death. In Africa, with the exception of a few countries (Egypt, Libya, Sudan, Botswana, Equatorial Guinea), death penalty has been abolished. In Asia, the importance of the use of death penalty is decreasing. In China it is argued that, as a developing country, death penalty cannot be abolished in the next couple of decades.

Ambassador Hans Winkler, Director of the Diplomatic Academy of Vienna, spoke on the existing and potential diplomatic measures and activities that can be designed as arguments to persuade governments to abolish death penalty. He mentioned that the symposium was a timely initiative and that significant progress can be noted towards the universal abolition of the death penalty. Speaking from his experience working in the Legal Office of the Austrian Ministry of Foreign Affairs, he specified that the protection of human rights was always high on the agenda, including efforts made towards the abolition of capital punishment. Ambassador Winkler mentioned the intensive efforts made by former Justice Minister Christian Broda in this regard. In Europe's case, there was an extraordinary opportunity after the fall of the Iron Curtain. On a state-to-state level, it was possible to "blackmail" central and eastern European states to abolish it. Membership to the Council of Europe and the European Union was partly conditioned on the abolition of the death penalty. The sole exception was Belarus. The UN, though lacking legal power, is constantly adopting resolutions to forward the efforts towards the abolition of the death penalty. It is important for a state's reputation nowadays to be seen as a protector of human rights. Part of this reputation concerns, of course, the abolition of the death penalty. The more countries abolish death penalty, the harder it will be to justify it. We can speak nowadays of a community, a national and global public opinion that obliges states, morally and politically, to change their position. It was his belief that in the next 10-20 years, half of the states that still use capital punishment will have abolished it. Within this background, the role of the NGOs and the civil society is just as important as that of the state. It is high time that they work together to achieve the goal of universally abolishing death penalty.

On behalf of the International Commission against the Death Penalty, Secretary General **Asunta Vivó Cavaller** spoke of the role that international organizations have in the efforts made to abolish death penalty worldwide. She underlined that there is a momentum in this sense that should be taken advantage of, since 139 states have already abolished death penalty (*de facto*

and/or *de jure*) and only 58 states are left. She then proceeded to illustrate the efforts of the International Commission against the Death Penalty (ICDP). Founded on October 7, 2010, the ICDP has 30 high-ranking members, fully independent and impartial, as well as 15 advisor countries. It has issued till now 28 statements, is collaborating with other NGOs, participates at awareness-raising events, and meets every 3-4 months. The ICDP promotes the *de jure* abolition of death penalty, where only the *de facto* abolition is in place; militates for stopping executions of juvenile offenders and pregnant women and undertake positive steps towards a worldwide moratorium on the abolition of the death penalty.

Miri Sharon, Drug Control and Crime Prevention Officer (UNODC), underlined the fact that death penalty is not an acceptable or effective legal instrument. The focus of UNODC's activities is based on elaborating standards and norms for criminal justice. They are not binding rules, but legal instruments nevertheless. Meant to be guidelines for practitioners, these are a summing up of best practices in the field. It is important to create a humane and efficient legal system, in which the human rights of the sentenced are protected. This aspect is particularly of importance for juvenile offenders, pregnant women, new mothers and insane people. The 2002 report on crime prevention included different studies on the abolition of death penalty. The 2011 report stresses the right to legal aid for those sentenced to death penalty. In her view, the number of convictions to death sentence would be significantly reduced, if they had an efficient defense, based on existing safeguards that guarantee their rights.

Representing the Academic Network for the Abolition of the Capital Punishment, **Prof. Dr. Antonio Muñoz Aunion** addressed the question of the contribution that academic research can bring to providing efficient mechanisms, including monitoring assistance, and a strategy in order to achieve the universal abolition of the death penalty. Prof. Muñoz Aunion presented the activity of the Academic Network for the Abolition of the Capital Punishment and stressed the efforts made towards raising awareness about the abolition of the death penalty. The strongest barrier against death penalty is a well-informed and active public opinion. It is in this field that he considered the role of the academia most important. Also, in his view, death penalty is more a question of human rights, than a legal issue. Nevertheless, the legal dimension cannot be ignored, as it is necessary to achieve a lasting change.

Heping Dang, PhD candidate at the National University of Ireland, Galway and on behalf of the Irish Center for Human Rights addressed the question of using the public opinion as a reason to use capital punishment. Given their obligations pursuant the signing of international treaties concerning the abolition of death penalty, states have an obligation to inform and influence the public opinion towards the abolition of death penalty.

Dr. Jaleh Lackner-Gohari (**Das Iranische Wien**) spoke on differences in cultural concepts relating to crime and punishment and difficulties of communication between different states and their respective civil societies. The NGOs could potentially be relevant in bridging this

gap. In the case of Iran, and its vibrant civil society this may be very meaningful. Presently any exchange at official inter-state communication is in the gridlock. Economic payoffs set the conduct of states, since no country wants to give up this profit-making exchange in order to become explicitly adamant on human rights. Iran's situation is moving towards political isolation. However, isolation and break down of communication are no answer to the ongoing conflict and the deplorable situation of human rights in Iran. The challenge is to find means for fruitful and constructive interaction, communication, without compromising on basic human rights of the people of Iran. With regard to the issue of death penalty, only a step-by-step approach could be imagined to work in present Iran: asking for the abolition of the death penalty will not work at once. Granting desired incentives and maintaining a high degree of transparency at all times is crucial to get binding agreements. The reinforcement of the emerging layers of the Iranian civil society is an increasingly crucial and promising avenue. What Dr. Lackner-Gohari could see as a workable approach is to demand, in a first step, for the cessation of two most disturbing practices in Iran, without any delay: first, Iran has **to stop public executions at once**, and second, fully and totally stop the **execution of minor delinquents** (in accordance with the UNICEF Convention of the Rights of the Child that the country had signed many years ago). Already these steps would decrease the self-generating level of violence in the country and pave the way for further discussion on the abolition of death penalty. De-sensitization with regard to violence is the main need of the moment, a very important one, as it were. Flogging (recently of a female PhD student) in public should not become a "normal" procedure of crime punishment for the public eye. The ruling authorities in Iran must understand that such acts of violence harm everyone's human dignity and increases the potential of further crimes. Not to forget, active steps towards reinforcing the civil society are paramount.

The podium discussion was then followed by an active debate, focusing on two relevant questions: the responsibility of European firms that export lethal injection drugs and extra-judicial executions. Whereas the former is concerned, participants agreed that in Europe the responsibility belongs to the enterprise, and that it could be prosecuted.[50] **Dr. Michael Platzer** (ACUNS) raised the question of extra-judicial executions. To which extent can states be sanctioned and just how realistic/effective is this? In the end, it is a question of principle. What if, as a pressuring measure, the EU dropped contact with the countries still using death penalty? Another question raised was that of political opponents and "troublesome" journalists.

In response, **Ambassador Hans Winkler** made reference to public diplomacy and how it could have been more courageous in the efforts made towards the abolition of the death penalty. He mentioned different levels on which states can be pressured to abolish capital punishment: on a state-to-state level there are certain leverages that can be used; indirectly, at the institutional

[50] See the case of the firm Sandoz in Innsbruck, which exported Thiopental to the U.S.: http://www.wienerzeitung.at/nachrichten/panorama/chronik/28928_Narkosemittel-aus-Tirol-bei-US-Hinrichtungen-benutzt.html. On the firm's corporate social responsibility policy also see: http://www.sandoz.at/site/de/gesellschaftliche_verantwortung/philosophie/index.shtml, accessed on 10.04.2012

level, there are always face-saving measures that will be taken, and last, the internal opposition, public pressure need not be forgotten. The issue-matter concerns not just one actor, but a wide range of stakeholders.

Prof. Schabas underlined that more research needs be to done on the scale and potential of refusing to extradite persons to states where death penalty is still used. In his view, in such countries the norms of international criminal law are not observed. Prof. Schabas gave the example of the U.S. and emphasized that for the sanity of the legal system, death penalty must be abolished. He drew a distinction between extra-judicial executions and the use of death penalty. The former concern political opponents mainly and can be tagged as murders (i.e. first degree nurders).

Prof. Dorota Gyericz, Professor at the Webster University Vienna and the European Peace University, drew attention to the case of Russia (abolished death penalty *de facto*), where this distinction can hardly be observed, considering the number of journalists that have turned dead in the recent years, as well as the events taking place in the Caucasus and Chechnya. It is the state's duty to protect all its citizens.

Prof. Dr. Antonio Muñoz Aunion agreed to the fact that the rule of law is not observed completely. **Asunta Vivó Cavaller** brought up the question of the 58 states that still need to abolish death penalty. The ICDP has access to a wide range of NGOs and receives a lot of relevant information regarding the ongoing efforts made in these states. This is of high importance, since it facilitates transforming the abolition of the death penalty from a national/sovereignty issue to an issue of human rights. The ICDP and other IOs contribute thus to bringing the stakeholders together, creating the necessary background for this transition.

Prof. Schabas concluded the session by noting the mature level of the discussion, since there was no debate on whether death penalty should be abolished or not, but the common denominator was on what efforts that still need be made to achieve the universal abolition of the death penalty. Whatever the arguments for this may be, religious, moral, pragmatic or just symbolic gestures to break with the past, it is clear that public awareness has increased, which can only be beneficial for the universal abolition of capital punishment.

The evening ended with a concert of Robert Hager von Strobele, entitled "*Ballades*", a final tour of the exhibition "*Art and Law*", and the visit of the memorial room and execution chamber of the Nazis.

November 13 marked the last event of the series. In cooperation with **Das Iranische Wien (IRWI)**, and the Polish Cultural Institute Vienna, the film *"Thou Shall not Kill"* was shown at the Metro Cinema. The film is part of an award-winning film series consisting of 10 masterpieces by the Polish film director **Christoph Kieslowski** and led to the abolition of the

death penalty in Poland. The movie can be watched in six parts on http://www.youtube.com/watch?v=v174DtdA_n4 and a comprehensive review of the 10-piece series can be read on http://www.noripcord.com/reviews/film/decalogue.

The screening was followed by a discussion with **Dr. Jaleh Lackner-Gohari** (**Das Iranische Wien**) and **Dr. Slawomir Redo** (Professor, Law Faculty, Uczelnia Lazarskiego, Warsaw/Poland), moderated by **Dr. Michael Platzer** (ACUNS). The later opened the discussion by introducing the film and quoting Stanley Kubrick (who described the series as the only masterpiece made in his lifetime) "… *the very rare ability to dramatize their ideas rather than just talking about them. By making their points through the dramatic action of the story they gain the added power of allowing the audience to* discover *what's really going on rather than being told. They do this with such dazzling skill you never see the ideas coming and don't realize until much later how profoundly they have reached your heart*." (http://mostlyfilm.com/2011/09/21/perfect-10/).

Dr. Slawomir Redo then took the floor and discussed the movie from his experience as a lawyer and UN official. He considered that the film projected very well the wide-ranging apathy that characterized Poland in the 1980s. "*Thou Shall not Kill*" is indeed an ascetic movie, for it uses limited, yet powerful ways of expressing the value of life from both sides. As a lawyer, he regarded the case as one of deliberate, 1st degree murder. As a UN official however, despite the crime, he emphasized that there was no justification for the state to use its power to kill its citizens. The lawyer taking his bar exam in the film talks precisely of the uselessness of the death penalty in preventing crime. There is no evidence in this regard, one of the reasons for which 139 have already abolished death penalty. This is proof to the fact that significant progress has been achieved. In the case of Poland, this film made a large contribution to the abolition of the death penalty in 1997.

Dr. Jaleh Lackner-Gohari drew attention to the austere images in the film and their powerful effect. In her view, the work of director Christoph Kieslowski is an ever-lasting one, since it points to sacred things that man should not touch, such as the right to life. As shocking as the movie was, the situation in Iran is even worse. Most executions are public and involve a dramatic staging. Youngsters are involved, not just as spectators. Construction sites are used to hang more persons at once. It is her belief that in no other country death penalty is used in such a horrible and indiscriminate way. The targets include youngsters, women (mostly of poor backgrounds), religious and ethnic minorities and the authorities' motives are far than transparent. Extra-judicial executions are also being carried out. Intellectuals are arrested during the night with no explanation, no right to legal counsel or legal ceremony. Mass executions are also known to have taken place. The worst part of all this is that society gets used to death and gradually accepts it as a legitimate form of punishment. Despite this, there is still the hope that with the aid of concerned stakeholders the situation in Iran will improve.

Concluding the podium discussion, **Dr. Michael Platzer** mentioned the firm in Innsbruck that exports lethal injection drugs to the U.S. and its responsibility for thus assisting to the executions. Also, he made reference to the memorial plaque for executed resistance fighters made by ACUNS intern **Anna Scheithauer** and thanked **Magdalena Bielecka** (Polish Cultural Institute Vienna) for the support offered in making the screening possible.

The floor was then opened to contributions from those present in the audience. One of the participants spoke of his father, a victim of Nazi justice, sent to the guillotine on accusations of being a member of the Resistance. He mentioned his working on a book that would shed light into just how terrible those times were and what death penalty actually means, especially for the families of those sentenced. This is to be based on a number of original documents (letters and notes) that his father managed to send out of the prison. The main purpose of the endeavor is to do justice to the memory of the executed.

The case of China was also brought up, in relation to the documentary "*Dead Men Talking*", based on the television program "*Interviews before execution*" produced by Ding Yu, a popular Chinese television reporter. The trailer of the documentary can be seen on http://www.idfa.nl/industry/tags/project.aspx?id=DD424944-B10B-4170-B84A-8E45C4A6F35A.[51] *Capelli Valerio* wrote an article in *Corriere della sera*, on October 29, 2011 on this documentary. The show is watched by 40 million spectators in China and is one of the three most watched in a network of 50 channels. It is broadcast in public places, in bars, as well as in the district prisons. The director points to the pedagogical role of the program, saying "*It is a great idea, be it commercial, but from the point of view of social responsibility. We want the spectator to be informed, in order to avoid other tragedies.*" Nothing is left aside, crying, screaming, the last encounter of the convicted with his/her parents in the courtyard of the prison as they see the open military trucks bringing the prisoners through the city. The prisoners stand on their feet, they have a sign on their backs indicating the crimes for which they are put to death, a warning for the passers-by that observe this in silence on the sidewalk. Ding Yu sees herself as a witness that enters their minds just before death arrives. "*I cannot forget certain moments, cannot do anything. I think these persons were killed because of their crimes. And this makes me feel better.*" 90% of the crimes she deals with concern treason, theft, in which the victim survived. The most heartbreaking scene is that of the encounter of the parents of the prisoner and the victim's. In some cases, if the family of the victims pardons the prisoner, the punishment can be commuted to life sentence. The narrator notes that 55 crimes exist in China, from smuggling to homicide, punished with death penalty. This is carried out through fusillade or lethal injection. Yearly, around 3,500 prisoners are condemned to death. One of the interviewed judges said that they were not ready yet to renounce this practice. At the time the documentary was made, Ding Yu had already produced 208 episodes.

[51] See also *China's Death Row TV Hit: Interviews before Execution*, accessed online at http://www.bbc.co.uk/news/magazine-17303746

Another participant talked about the Iranian case and how important it is to address the philosophy behind death penalty. Should an eye for an eye be the ruling principle? With no democratic regime in place, every death penalty sentence is somehow related to high treason, whether we are talking of homosexuals, drug dealers or political prisoners.

Speaking from his experience as policemen, a member of the audience underlined the hard work that is done to investigate cases of serial murders, just to find out in the end that they feel no remorse, that if they could, they would kill again. In his opinion, in such cases death penalty is justified.

The case of the Rwandan Genocide was briefly touched upon, with a view to the fact that is was premeditated. **Dr. Slawomir Redo** made the distinction between different forms of institutionalized violence. From his point of view, genocide and death penalty cannot be put under the same umbrella. Violence in the world has decreased in the recent years and states have taken crime under control. The question of emotions is paramount in the efforts towards abolishing death penalty. Statehood and the bloody/tribal instinct (regression to the state of nature) herein clash. The former is the reason for which 139 states have already abolished capital punishment. The discussion should not be grounded on emotional basis, since the first emotional reaction is to punish. The most important task at hand for the civil society is the education of the public about death penalty and what it means.

Dr. Jaleh Lackner-Gohari concluded the discussion by stressing that in the case of Iran, educating the public and the role of the media are two touchy questions, since journalists are regarded as traitors, if they deviate from the official discourse. In many regards, Iran is a tribal, anachronistic society, where many do not understand why death penalty should be abolished. Global public opinion should pressure Iran in this sense.

IV. London Declaration[52]

The participants of the London conference[53] "Progressing toward abolition of the death penalty and alternative sanctions that respect international human rights standards" held on 19 and 20 September 2011, at the European Commission's Representation to the United Kingdom, organised by Penal Reform International are,

- *Convinced* that the death penalty undermines human dignity and can amount to cruel, inhuman and degrading treatment or punishment;

- *Noting* that there is no convincing evidence that the death penalty deters criminal behaviour any more effectively than other punishments;

- *Recalling* that where the death penalty is retained at all, it should only be imposed for the "most serious crimes"[54], and after a fair trial[55] has been granted to the accused;

- *Mindful* that the death penalty creates additional victims – the family members of those who have been executed – who are often forgotten, marginalised or stigmatised by society;

- *Mindful* that the essential aim of the penitentiary system should be the "reformation and social rehabilitation"[56] of prisoners;

1. *Call upon* those states that still retain the death penalty, pending full abolition, to:

a. fully comply with the United Nations General Assembly Resolutions 62/149 (2007), 63/168 (2008) and 65/206 (2010) calling for a moratorium on executions;
b. ensure that laws and policies at the very least fully comply with the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty[57];

[52] The full text of the Conference Report, *Progressing toward abolition of the death penalty and alternative sanctions that respect international human rights standards* is available on http://www.icomdp.org/cms/wp-content/uploads/2011/11/Full-Report-of-PRI-Death-Penalty-Conference-London-19-20Sept2011.pdf.
[53] Over one hundred participants attended the conference, including government officials, and representatives of civil society and inter-governmental organisations from 31 countries (Algeria, Armenia, Austria, Azerbaijan, Bangladesh, Belarus, Belgium, Canada, China, France, Georgia, Jordan, Kazakhstan, Kenya, Kyrgyzstan, Lebanon, Morocco, Nigeria, Poland, Qatar, Russia, Switzerland, Syria, Tajikistan, Tanzania, Tunisia, Turkey, Uganda, Ukraine, United Kingdom and United States of America).
[54] *Article 6(2), International Covenant on Civil and Political Rights (ICCPR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 and entry into force 23 March 1976, in accordance with Article 49*
[55] Article 14, ICCPR
[56] Article 10(3), ICCPR
[57] Approved by the UN Economic and Social Council resolution 1984/50 of 1984

c. reduce the number of death penalty applicable crimes to only the "most serious crimes", which is limited to an intention to kill resulting in a loss of life;
d. abolish mandatory death sentences, and establish sentencing guidelines for capital cases where there are none;
e. prohibit the use of the death penalty against juveniles, persons who were juveniles at the time when the crime was committed, pregnant women, mothers with young children, and those suffering from mental disabilities;
f. provide training for judges and professionals working in the criminal justice system to ensure they are fully aware of the relevant international standards relating to the death penalty;
g. provide education programmes and awareness raising activities to ensure people are generally aware of the human rights standards, which apply to the death penalty.

2. *Call upon* those states that have an official or *de facto* moratorium on executions, or a partial abolition, to:

a. establish a moratorium on sentencing;
b. commute sentences for prisoners on death row, taking into consideration the time already spent in prison;
c. take the necessary steps through legislative or constitutional reforms to abolish in law the death penalty for all crimes.

3. *Call upon* those states that have abolished capital punishment to enact legislation guaranteeing that it cannot be re-instated.

4. *Recall* the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant of Civil and Political Rights, the Convention against Torture, and the Optional Protocol to the Convention Against Torture; and *recommend* that all states ratify and implement these human rights treaties, and other relevant international and regional instruments.

5. In recognition of the important role that regional inter-governmental bodies play in forming standards and norms

a. *call upon* the Arab League and the African Commission on Human and Peoples' Rights to initiate negotiations to explore the possibility of adopting regional protocols aiming at the abolition of the death penalty;
b. *call upon* the Arab League to amend Article 7 of the Arab Charter for Human Rights to absolutely prohibit the sentencing to death and execution of those under the age of eighteen at the time of the commission of the crime.

6. *Recall* that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"[58] and that death row and life/long term prisoners are entitled to the same basic civil and political rights as other categories of prisoners.

7. *Call upon* states to:

a. implement alternative sanctions to the death penalty that are fair, proportionate and respect international human rights standards, including the right to adequate accommodation, food, water, medical and psychiatric care, education, employment, fresh air, visitation, and access to religion;
b. humanise alternative sanctions to the death penalty by reducing the number of life/long-term offences to only the "most serious crimes"; ensure that there is a realistic right of parole for all life/long-term sentenced prisoners, and that the parole system is transparent and respects due process principles.

8. *Call for* full, accurate and public reporting on the use of the death penalty and its alternative sanctions, including the number of sentenced prisoners, age, sex, crimes, length/type of sentence and place of sentence, in recognition of the importance of transparency to prevent errors and abuses, to safeguard fairness in the criminal justice system and to inform national debates.

9. In recognition of the suffering of victims of violent crime and their loved ones, *call upon* states to:

a. ensure that all victims be treated with dignity, respect and equality throughout the criminal process, regardless of their beliefs about or position on the issue of the death penalty;
b. establish a victims' compensation fund where there is none;
c. address the rights of victims to reconciliation or mitigation with the offender where appropriate, and provide any other psycho-social support.

10. *Call upon* the states that retain the death penalty to:

a. provide the family and lawyers of prisoners on death row with advance notification of the date, time and place of execution, permitting final visits and final personal preparation;
b. inform the family of the place of burial and allow the body of the prisoner to be handed over to the family.

11. *Emphasise* the importance of civil society organisations, including journalists, to engage in advocacy and campaign activities, and civil education on criminal justice issues, including on the

[58] Article 10(1), ICCPR

effect and efficacy of the death penalty and its alternative sanctions, and encourage full collaboration between governmental bodies and civil society.

12. *Strongly encourage* relevant international organisations and donor states in a position to do so to promote and support the fight against the death penalty and the implementation of humane alternative sanctions at both the financial and political level.

Adopted 20 September 2011, London, United Kingdom

This Declaration has been endorsed by the following organisations and individuals:

1. Amnesty International (global)
2. Mr Antony Tang, penal reform expert and PRI Board Member (Hong Kong)
3. British Foreign & Commonwealth Office (UK)
4. Centre for Capital Punishment Studies, University of Westminster (UK)
5. Dr Catherine Appleton, penal reform expert (Leeds University, UK)
6. Commissioner Catherine Dupe Atoki, Special Rapporteur for Prisons and Other Places of Detention in Africa, Member of the African Commission on Human and Peoples' Rights (Nigeria)
7. Mr David Daubney, penal reform expert and Chair of the PRI Board (Canada)
8. Mr Dirk van Zyl Smit, penal reform expert and PRI Board Member (Nottingham University, UK)
9. Foundation for Human Rights Initiative (Uganda)
10. Harm Reduction International (global)
11. International Centre for Prison Studies (UK)
12. International Commission Against the Death Penalty (global)
13. Legal Resource Consortium (Nigeria)
14. Mr Paul English, Justice & Prisons (UK)
15. Mr Paul Flodman, penal reform expert (UK)
16. Penal Reform International (global)
17. Mr Rob Allen, Justice & Prisons (UK)
18. Ms Vera Tkachenko, penal reform expert and PRI Board Member (Kyrgyzstan)
19. Vienna Alliance of NGOs for crime prevention and criminal justice (Austria)
20. World Coalition Against the Death Penalty (global)

V. Further Perspectives on the Use of the Death Penalty

Strategies for the Abolition of the Death Penalty

Manuel Maroto Calatayud and Marta Muñoz de Morales Romero[59]

A. Keeping public opinion informed

Since the start of the abolitionist movement, the apparent popularity of the death sentence in public opinion has constituted a central obstacle to its removal[60]. In fact, civil society is in favor of the death penalty in a great majority of countries. In this respect, the interview with Prof. Radelet is especially expressive, in which he indicates that, a few decades ago, the death penalty in the USA bordered on a question of identity: "You were in favor of your mother, of apple pie, of Mickey Mouse and of the death penalty". With a privileged place in the rhetoric of politicians and in the media, capital punishment is construed as a mechanism faced by populist reactions to the perpetration of horrific crimes. From that perspective, it has even been sustained that the abolition of capital punishment without popular support would amount to an anti-democratic measure.

The problem is that public opinion is not informed about certain questions that surround this punishment[61]. Judge Marshall of the North American Supreme Court, in the well-known case *Furman v. Georgia* pointed out that support for capital punishment depended on the information that the public had on its application. Following on the lines of this reasoning, numerous studies would demonstrates an indirectly proportional relation between the amount of such information available to society and the extent of the support in society for the death penalty: the greater the awareness of information on the death penalty, the fewer the number of people to support it[62]. In other words: support for the death penalty is nothing other than a direct consequence of society's ignorance of such problems, and the expression of discrimination, arbitrariness, and judicial error

59 Institute of European and International Criminal Law, University of Castilla-La Mancha, Spain

60 Hodgkinson, P./Kandelia, S./Gyllensten, L.: "Capital Punishment: a review and critique of abolition strategies", in Yorke, J. (ed.): Against the Death Penalty: International Initiatives and Implications, Ashgate Publishing, 2008.

61 See Haney, C.: *Death by design: Capital Punishment as a Social Psychological System*, American Psychology-Law Society Series, Ed. Oxford University Press, 2005, p. 6.

62 Vollum, S./Longmire, D.R./Buffington-Vollum, J. (2004): "Confidence in the death penalty and support for its use: Exploring the value-expressive dimension of death penalty attitudes", in *Justice Quarterly*, 21(3), 521-546. Formerly, Hass, K./Inciardi, J.A.: "Ungering Doubts About Capital Punishment", in C. Hass, K./Inciardi, J.A. (eds.): *Challenging Capital Punishment*, 1988, pp. 11-28.

associated with its application[63].

1. Fairness

One of the points on which effort to inform public opinion has focused is the discriminatory nature of the application of the death penalty[64]. As indicated by Lizzie Seal in the documentary, if it can be demonstrated that the death penalty is a punishment that affects certain groups in a disproportionate way (Afro-Americans, people with limited economic resources, etc.), it is very likely that people traditionally in favour of it will change their opinions. Empirical studies on the disproportionate application of the death penalty on the grounds of race leave no room for doubt: when the victim of the crime is a white person, recourse to the death penalty is more frequent than when the victim is a black person. A clear example of this tendency is the USA: there are 15 cases of white people executed where the victim of the crime is a black person, as against 246 cases where the perpetrator is a black person and the victim is a white person[65]. The reports also show that more than one third of Afro-Americans sentenced to death in Pennsylvania would have been sentenced to life imprisonment without parole, merely if they had been white[66]. Along the same lines, various academic studies have demonstrated that prosecutors are more likely to request the death penalty in court when the victim of the crime is white[67].

Likewise, it should be taken into account that the death penalty is not only applied in a discriminatory way on the grounds of race. Inequality is equally evident in the cases of people with few economic resources. On this point, Bright points out that "throughout history, the death penalty has been set aside almost exclusively for poor people"[68], which has meant a considerable reduction in their defence rights: they are assigned inexpert lawyers who do not have all the necessary material and who tend to deal with these types of cases rapidly without paying attention to relevant questions. They either fail to present all the available evidence to prove the innocence of the accused, or by omission leave out elements which could prove that their clients suffer from some illness that would prevent the application of the death penalty, etc.[69]

---

63 Complementary reading: Bright, S.B.: "Will the Death Penalty remain alive in the Twenty-First Century?: International Norms, Discrimination, Arbitrariness and the Risk of Executing the Innocent", in *Wis. L. Rev*. 1 2001, pp. 12-15.

64 Complementary reading: Radelet, M.: "Racial characteristics and the imposition of the death penalty", in *American Sociological Review*, 1981, vol. 46.

65 See D*eath Penalty Information Centre: Facts about the Death Penalty*. Updated September 20, 2010: http://deathpenaltyinfo.org/FactSheet.pdf.

66 See *Evaluation fairness and accuracy in State death penalty systems: The Pennsylvania Death Penalty Assessment Report: An Analysis of Pennsylvania's Death Penalty Laws, Procedures, and Practices*, October 2007, American Bar Association.

67 See Paternoster, R. et. al.: *An Empirical Analysis of Maryland's Death Sentencing System with Respect to the Influence of Race and Legal Jurisdiction*: http://www.newsdesk.umd.edu/pdf/finalrep.pdf; and Collins, D.: *Yale Study: racial bias, randomness mar Conn. death penalty cases*, Associated Press, December 12, 2007.

68 Bright, S.B.: "Will the Death Penalty remain alive in the Twenty-First Century?...", op., cit., p. 16.

69 *Ibídem*, pp. 16-22.

2. Innocence

In second place, the abolitionist movements have attacked the legitimacy of the death penalty with the important argument of innocence. Neither is there any room for doubt here: hundreds of innocent people are condemned to death in the world and in many cases, moreover, despite doubts about their guilt, the execution goes ahead[70]. In the USA, for example, more than 130 people have been freed from death row since 1973 after having proved their innocence[71]. One of these 130 privileged people is Joaquín José Martínez who tells us in his interview about the long and anxious legal road until he demonstrated that he was not responsible for the deaths of which he was accused. Without a doubt, if he had not had the support of the international community, his case, he tells us in the documentary, would have ended with yet another execution.

3. The families of the convicted person

A third channel of information, probably not so well explored, consists in raising public awareness about the emergence of a new type of victim. Not only are the victims of the crime (the murdered person and their parents, friends and family) present in cases of capital punishment, but there is also the other side: the family of the convicted person[72]. The testimony of Prof. Radelet in the documentary, when describing the state of the convicted prisoner's children prior to the execution is frightening: "Please, don't kill my dad". The families of the convicted person are the great "forgotten" ones, they are in short, the "hidden" victims[73]. In the case of small children, the effects that the execution of their father or mother has on them are devastating. Their day-to-day existence consists in seeing their parents in prison knowing that they will be executed. The trauma may be so deep, indicates Sandra Babcock, that they may develop problems of depression, alcohol, and drug dependency in adulthood or in adolescence.

B. Fighting against the dehumanization of the criminal

All abolitionist strategies should aspire to make public opinion empathize to a certain degree with prisoners sentenced to the death penalty. It is a matter of bringing the convicted people into society, presenting details of their lives, their place of origin, their families and their personalities, to dispel myths and mistaken tendencies that mean the criminal is considered a totally different being from the rest of humankind. Criminals, Sandra Babcock reminds us, are

70 See Amnesty International Report Fatal Flaws: Innocence and Without a doubt, if he had not had the support of the Death Penalty in the USA, the international community, his case, he tells us November 1998, p. 4. Available in the documentary, would have ended with yet at http://www.amnesty.org/en/library/asset/AMR51/069/1998/en/559646dad9b611ddaf2bb1f6023af0c5/amr510691998en.pdf.

71 See *Death Penalty Information Centre: Facts about the Death Penalty*, op., cit.

72 Complementary reading: Beck, E. et al.: "Seeking Sanctuary: Interviews With Family Members of Capital Defendants", in *88 Cornell Law Review*, 2003; Jones, S./Beck, E.: "Disenfranchised Grief and NoAnfinite Loss as Experienced by the Families of Death Row Inmates", in 54 Omega J. Death & Dying, 2007; King, R.: "The Impact of Capital Punishment on Families of Defendants and Murder Victims' Family Members", in *89 Judicature 292*, 2006.

73 See Sharp, S.F.: *Hidden victims: the effects of the death penalty on families of the accused: Critical issues in crime and society*, Preface by M. Radelet, Ed. Rutgers University Press, 2005.

human beings, and should not be defined and remembered for the most monstrous thing that they may have done[74]. We all have some kind of redeeming quality although, as with any of us, it has a dark side, which does not eclipse its humanity.

C. Appealing to religious values and intercultural cultures

In Islamic countries, strategies for abolition centre on the search within the religion and faith itself, for arguments that serve to question the death penalty. As Prof. Yorke makes clear in the documentary, it is a matter of demonstrating to these cultures that the abolition of the death penalty is not something to be imposed from Europe, but is a question that is anchored in their own faith. Thus, Prof. Nadja Bernaz reminds us that the death penalty is neither envisaged in the Koran as a generic punishment nor is it at all obligatory for the great majority of crimes[75]. The key to removing it would involve a call to the widely accepted idea in all religions that God is merciful and mercy would not acquiesce to the death sentences.

D. Strengthening the humanist principles of criminal policy

In reality, the debate over the death penalty encapsulates a general discussion on criminal policies and the criminal and justice system that are found in contemporary societies and which they aspire to have in the future. From that perspective, a devaluation of criminal policy may be observed that becomes apparent from very many different perspectives[76]: states are increasingly repressive; greater social control is required; victims are used to support controversial political decisions; expert knowledge and opinions are no longer taken into account; feelings of vengeance re-emerge; resocialization as the fundamental purpose of the punishment loses weight all the time, giving up its place to long prison terms bordering on life imprisonment. Díez-Ripollés comments with great precision on certain strategies to change this panorama. Thus, effort should centre on exposing the social communications media, on organizing and mobilizing pressure groups that are contrary to this model of public security, and on restoring once again a long forgotten aphorism: politicians are opinion formers and not mere conveyors of opinions generated in the community. Applied to the death penalty, it means that political leaders can not contend that public opinion is overwhelmingly retentionist. Furthermore, the communications media should rework their information models, moving from the morbid details of the crime to the conditions of the perpetrator and the structural problems of the system in which the death penalty is applied.

---

74 Along the same lines, Bright, S.B.: "Will the Death Penalty remain alive in the Twenty-First Century?...", op., cit., p. 26.

75 Complementary reading: Bassiouni, M.C.: "Death as a penalty in the Shari'a", in The Death Penalty, Sessions of International Commission of Jurists, 2000.

76 Complementary reading: Díez-Dipollés, J.L.: "El nuevo modelo penal de la seguridad ciudadana", in *Revista Electrónica de Ciencia Penal y Criminología*. Text available at http://criminet.ugr.es/recpc/06/recpc06-03.pdf.

E. Compensating the victims[77]

One of the arguments traditionally put forward to support the death penalty, as we have seen, is that it enables the victims of the crime to "close" that traumatic episode in their lives and lets them move on. However, there is not one single scientific study to demonstrate that the families of a murder victim suffer less pain or recover sooner by killing the perpetrator of the crime, in comparison with other cases that do not end in execution (either because it is not imposed, or because it is not envisaged in the State where the case is brought to court, etc.). In fact, one group of victims after losing their loved ones in a violent event openly opposed the death penalty[78]. A second reason that exposes the false belief of "closure", as Prof Radelet makes plain, is that the families of murder victims have never been consulted to find out what they really want. Abolitionist groups are aware of this and for that reason they arrange events on their agendas in which these families participate. This is the case, for example, of the round tables and debates that are organized as part of the International Conferences against the death penalty of the World Coalition against the Death Penalty and the Ensemble contra la peine de mort[79]. In fact, it is impossible to imagine an event in the abolitionist community that does not reflect on ways of compensating the victims.

Given that judicial proceedings are not an appropriate way of evaluating the legitimate needs and rights of the families and victims of violent crimes, all the effort is channelled into restorative justice[80]. Restorative justice begins with the idea that the crime is not only committed against the State, but also against the victim and the community, such that its fundamental objective is to restore all parties to the conflict, including the families of the perpetrator. With regard to the death penalty, restorative justice is still a pilot project that has nevertheless begun to be used in some countries such as the USA, through the Victim-Offender Mediation (VOM) service. This consists of programs that seek to reduce victimization through educational workshops on various themes. Their objective is not necessarily to achieve the forgiveness of the victims' families, although when possible they do look for a connection and even mutual understanding between both parties. Through restorative justice and, in particular through dialogue, the criminal faces up to the harsh reality of being the person that has deprived an entire family of the presence of a loved one, whereas the family of the deceased no longer see the prisoner as the one that killed their child, parents, brother etc., and start to see him for what he is: a human being.

---

77 Complementary reading: Hodgkinson, P.: "Europea-A Death Penalty Free Zone: Commentary and Critique of Abolitionist Strategies", in *26 Ohio N.U. L. Rev. 625 2000*, in particular, pp. 646-651.

78 Thus, see *M.D. Common on Capital Punishment, Final Report to the General Assembly 55 (2008)*, available at http://www.scribd.com/doc/8948491/Maryland-Death-Penalty-Commission-Final-Report.

79 See, respectively, http://www.worldcoalition.org/modules/accueil/ and http://www.abolition.fr/ecpm/index.php.

80 Complementary reading: Hodkinson, P.: "Capital Punishment– The families of the homicide victim and the condemned", in Hood, R./Badinter, R. (eds.): *The death penalty: beyond abolition*, (ed.) Council of Europe, 2004, p. 54 and ff. and Rossi, R.A.: "Meet Me on Death Row: Post-Sentence Victim-Offender Mediation in Capital Cases, in *9 Pepp. Disp. Resol. L. J.*, 2008-2009, p. 185 and ff.

Status of ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

STATUS AS AT : 11-04-2012 10:21:53 EDT[81]

CHAPTER IV
HUMAN RIGHTS

12. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
New York, 15 December 1989

Entry into force : 11 July 1991, in accordance with article 8(1)

Registration : 11 July 1991, No. 14668

Status : Signatories: 35. Parties : 74

Text : United Nations, *Treaty Series*, vol. 1642, p. 414.

Note : The said Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, was adopted by resolution 44/128[1] of 15 December 1989 at the Forty-fourth session of the General Assembly of the United Nations and is open for signature at the United Nations Headquarters in New York by all States having signed the International Covenant on Civil and Political Rights.

Participant	Signature	Ratification, Accession(a), Succession(d)
Albania		17 Oct 2007 a
Andorra	5 Aug 2002	22 Sep 2006
Argentina	20 Dec 2006	2 Sep 2008
Australia		2 Oct 1990 a
Austria	8 Apr 1991	2 Mar 1993
Azerbaijan		22 Jan 1999 a
Belgium	12 Jul 1990	8 Dec 1998
Bosnia and Herzegovina	7 Sep 2000	16 Mar 2001
Brazil		25 Sep 2009 a
Bulgaria	11 Mar 1999	10 Aug 1999
Canada		25 Nov 2005 a
Cape Verde		19 May 2000 a

[81] http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&lang=en, accessed on 12 April 2012

Chile	15 Nov 2001	26 Sep 2008
Colombia		5 Aug 1997 a
Costa Rica	14 Feb 1990	5 Jun 1998
Croatia		12 Oct 1995 a
Cyprus [2]		10 Sep 1999 a
Czech Republic		15 Jun 2004 a
Denmark	13 Feb 1990	24 Feb 1994
Djibouti		5 Nov 2002 a
Ecuador		23 Feb 1993 a
Estonia		30 Jan 2004 a
Finland	13 Feb 1990	4 Apr 1991
France		2 Oct 2007 a
Georgia		22 Mar 1999 a
Germany [3]	13 Feb 1990	18 Aug 1992
Greece		5 May 1997 a
Guinea-Bissau	12 Sep 2000	
Honduras	10 May 1990	1 Apr 2008
Hungary		24 Feb 1994 a
Iceland	30 Jan 1991	2 Apr 1991
Ireland		18 Jun 1993 a
Italy	13 Feb 1990	14 Feb 1995
Kyrgyzstan		6 Dec 2010 a
Liberia		16 Sep 2005 a
Liechtenstein		10 Dec 1998 a
Lithuania	8 Sep 2000	27 Mar 2002
Luxembourg	13 Feb 1990	12 Feb 1992
Malta [4]		29 Dec 1994 a
Mexico		26 Sep 2007 a
Monaco		28 Mar 2000 a
Mongolia		13 Mar 2012 a
Montenegro [5]		23 Oct 2006 d
Mozambique		21 Jul 1993 a
Namibia		28 Nov 1994 a
Nepal		4 Mar 1998 a
Netherlands [6]	9 Aug 1990	26 Mar 1991
New Zealand [7]	22 Feb 1990	22 Feb 1990
Nicaragua	21 Feb 1990	25 Feb 2009
Norway	13 Feb 1990	5 Sep 1991
Panama		21 Jan 1993 a
Paraguay		18 Aug 2003 a
Philippines	20 Sep 2006	20 Nov 2007
Poland	21 Mar 2000	
Portugal	13 Feb 1990	17 Oct 1990
Republic of Moldova		20 Sep 2006 a
Romania	15 Mar 1990	27 Feb 1991

Rwanda		15 Dec 2008 a
San Marino	26 Sep 2003	17 Aug 2004
Sao Tome and Principe	6 Sep 2000	
Serbia		6 Sep 2001 a
Seychelles		15 Dec 1994 a
Slovakia	22 Sep 1998	22 Jun 1999
Slovenia	14 Sep 1993	10 Mar 1994
South Africa		28 Aug 2002 a
Spain [8]	23 Feb 1990	11 Apr 1991
Sweden	13 Feb 1990	11 May 1990
Switzerland		16 Jun 1994 a
The former Yugoslav Republic of Macedonia		26 Jan 1995 a
Timor-Leste		18 Sep 2003 a
Turkey	6 Apr 2004	2 Mar 2006
Turkmenistan		11 Jan 2000 a
Ukraine		25 Jul 2007 a
United Kingdom of Great Britain and Northern Ireland	31 Mar 1999	10 Dec 1999
Uruguay	13 Feb 1990	21 Jan 1993
Uzbekistan		23 Dec 2008 a
Venezuela (Bolivarian Republic of)	7 Jun 1990	22 Feb 1993

Declarations and Reservations
(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

Azerbaijan [9]

Reservation:

28 September 2000

"It is provided for the application of the death penalty in time of war pursuant to a conviction of a person for a most serious crime of a military nature committed during wartime."

Brazil

Reservation:

... with an express reservation to article 2.

Chile

Reservation:

The State of Chile formulates the reservation authorised under article 2, paragraph 1, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and may in consequence apply the death penalty in time of war

pursuant to a conviction for a most serious crime of a military nature committed during wartime.

Cyprus [2]

Greece

Reservation:

Subject to article 2 for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

Malta [4]

Republic of Moldova

Declaration:

"Until the full re-establishment of the territorial integrity of the Republic of Moldova, the provisions of the Convention shall be applied only on the territory controlled effectively by the authorities of the Republic of Moldova."

Spain [8]

Objections
(Unless otherwise indicated, the objections were made upon ratification, accession or succession.)

Finland

27 September 2010

With regard to the reservation made by Brazil upon accession:

"The Government of Finland welcomes the accession of Brazil to the Second Optional Protocol to the International Covenant on Civil and Political Rights, and has taken note of the reservation made by Brazil to Article 2 thereof upon accession.

The Government of Finland recalls that it is the object and purpose of the Second Optional Protocol to abolish the death penalty in all circumstances and reservations are, as a main rule, not admissible. This object of aiming at the complete abolition of the death penalty enjoys the full support of Finland. However, the Government observes that, in the light of the wording of Article 2(1), a reservation to the Protocol is allowed to the extent it concerns the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. The acceptability of such a reservation requires that the State Party making the reservation communicates, at the time of ratification or accession, to the

Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

Accordingly, the Government of Finland would find the reservation made by Brazil acceptable, provided it meets the requirements set out in Article 2(1) and (2). According to information available to the Government, the applicable provisions of the national legislation of Brazil were not communicated to the Secretary-General at the time of accession. Therefore, the Government of Finland objects to the reservation. Should, to the contrary, Brazil have communicated the provisions to the Secretary-General pursuant to Article 2(2), this objection may be considered null and void.

This objection shall not preclude the entry into force of the Protocol between Brazil and Finland. The Protocol will thus become operative between the two states without Brazil benefiting from its reservation."

End Note

1. *Official Records of the General Assembly, Forty-fourth Session; Supplement No. 49 (A/44/49*, p. 206.

2. On 20 June 2003, the Government of Cyprus informed the Secretary-General that it had decided to withdraw its reservation made upon accession to the Optional Protocol. The reservation reads as follows:

"The Republic of Cyprus in accordance with article 2.1 of the [...] Protocol reserves the right to apply the Death Penalty in time of war pursuant to a conviction of a most serious crime of a military nature committed during wartime."

3. The German Democratic Republic signed and ratified the Protocol on 7 March 1990 and 16 August 1990, respectively. See also note 2 under "Germany" in the "Historical Information" section in the front matter of this volume.

4. In a communication received on 15 June 2000, the Government of Malta informed the Secretary-General that it had decided to withdraw its reservation made upon accession. For the text of the reservation, see United Nations, *Treaty Series*, vol. 1844, p. 318

5. See note 1 under "Montenegro" in the "Historical Information" section in the front matter of this volume.

6. For the Kingdom in Europe, the Netherlands Antilles and Aruba.

7. See also note 1 under “New Zealand” regarding Tokelau in the “Historical Information” section in the front matter of this volume.

8. On 13 January 1998, the Government of Spain notified the Secretary-General that it had decided to withdraw its reservation made upon ratification. The reservation reads as follows:

Pursuant to article 2, Spain reserves the right to apply the death penalty in the exceptional and extremely serious cases provided for in Fundamental Act No. 13/1985 of 9 December 1985 regulating the Military Criminal Code, in wartime as defined in article 25 of that Act.

9.The reservation made upon accession read as follows:

"The Republic of Azerbaijan, adopting the [said Protocol], in exceptional cases, adopting the special law, allows the application of death penalty for the grave crimes, committed during the war or in condition of the threat of war."

With regard to the reservation made by Azerbaijan upon accession, the Secretary-General received communications from the following States on the dates indicated hereinafter:

France (8 February 2000):

The Government of the French Republic has taken note of the reservation made by Azerbaijan to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which was adopted on 15 December 1989. This reservation, in allowing the application of the death penalty for grave crimes committed during war or ‘in condition of the threat of war', exceeds the scope of the reservations permitted under article 2, paragraph 1, of the Protocol. Under this article, only a reservation made ‘at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime' is admissible. Consequently, the Government of the French Republic expresses its objection to this reservation, without prejudice to the entry into force of the Protocol between Azerbaijan and France.

Finland (17 March 2000):

"The Government of Finland notes that, according to Article 2 of the Second Optional Protocol, a reservation other than the kind referred to in the same Article is not acceptable. The reservation made by the Government of Azerbaijan is partly in contradiction with Article 2 as it does not limit the application of death penalty to the most serious crimes of a military nature committed during the time of war.

The Government of Finland therefore objects to the reservation made by the Government of Azerbaijan to the said Protocol.

This objection does not preclude the entry into force of the Second Optional Protocol between Azerbaijan and Finland. The Optional Protocol will thus become operative between the two states without Azerbaijan benefitting from the reservation."

Germany, March 2000):

"The reservation allows the application of the death penalty for grave crimes committed during war 'or in condition of the threat of war'. Thus the reservation is partly in contradiction of article 2 of the Protocol since it does not limit the application of the death penalty to the most serious crimes of a military nature committed during the time of war.

The Government of the Federal Republic of Germany therefore objects to the reservation by the Government of Azerbaijan. This objection does not preclude the entry into force of the Protocol between Azerbaijan and Germany."

Sweden (27 April 2000):

"The Government of Sweden recalls that reservations other than the kind referred to in Article 2 of the Protocol are not permitted. The reservation made by the Government of Azerbaijan goes beyond the limit of Article 2 of the Protocol, as it does not limit the application of the death penalty to the most serious crimes of a military nature committed during the time of war.

The Government of Sweden therefore objects to the aforesaid reservation made by the Government of Azerbaijan to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

This shall not preclude the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights between the Republic of Azerbaijan and the Kingdom of Sweden, without Azerbaijan benefiting from the reservation."

Netherlands (17 July 2000)

" The Government of the Kingdom of the Netherlands notes that, according to Article 2 of the Second Optional Protocol, a reservation other than the kind referred to in the same Article is not acceptable. The reservation made by the Government of Azerbaijan is in contradiction with Article 2 as it does not limit the application of death penalty to the most serious crimes of a military nature committed during the time of war.

The Government of the Kingdom of the Netherlands therefore observed aforesaid reservation made by the Government of Azerbaijan.

This objection shall not preclude the entry into force of the Convention between the Kingdom of the Netherlands and Azerbaijan."

Subsequently, on 28 September 2000, the Government of Azerbaijan communicated to the Secretary-General a modification to its reservation made upon accession. Within a period of 12

months from the date of its circulation, i.e. on 5 October 2000, none of the Contracting States to the Protocol notified the Secretary-General of an objection. Consequently, the modified reservation was deemed to have been accepted for deposit upon the expiration of the 12 month period, i.e., on 5 October 2001.

Amnesty International: The development of Human Rights Standards on the Death Penalty - A timeline

1948: The United Nations adopted without dissent the Universal Declaration of Human Rights (UDHR). The Declaration proclaims the right of every individual to protection from deprivation of life. It states that no one shall be subjected to cruel or degrading punishment.

1966: The UN adopted the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the Covenant states that "no one shall be arbitrarily deprived of his life" and that the death penalty shall not be imposed on pregnant women or on those who were under the age of 18 at the time of the crime. Article 7 states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

1984: The UN Economic and Social Council (ECOSOC) adopted "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty." In the same year, the Safeguards were endorsed by consensus by the UN General Assembly. The Safeguards state, *inter alia*, that no one under the age of 18 at the time of the crime shall be put to death and that anyone sentenced to death has the right to appeal and to petition for pardon or commutation of sentence.

1989: The UN General Assembly adopted the Second Optional Protocol to the ICCPR. Its goal is the abolition of the death penalty.

1990: The Protocol to the American Convention on Human Rights was adopted by the General Assembly of the Organization of American States. It provides for the total abolition of the death penalty, allowing for its use in wartime only.

1993: The International Criminal Tribunal for the Former Yugoslavia stated that the death penalty is not an option, even for the most heinous crimes known to civilization, including genocide.

1995: The UN Convention on the Rights of the Child came into force. Article 37(a) prohibits the death penalty for persons under the age of 18 at the time of the crime.

1999: The UN Commission on Human Rights (UNCHR) passed a resolution calling on all states that still maintain the death penalty to progressively restrict the number of offenses for which it may be imposed with a view to completely abolishing it.

2002: The Council of Europe's Committee of Ministers adopted Protocol 13 to the European Convention on Human Rights. Protocol 13 is the first legally binding international treaty to

abolish the death penalty in all circumstances with no exceptions.

2005: The UNCHR approved Human Rights Resolution 2005/59 on the question of the death penalty, which called for all states that still maintain the death penalty to abolish the death penalty completely and, in the meantime, to establish a moratorium on executions.

2007: The UN General Assembly (UNGA) adopted Resolution 62/149 which called for all states that still maintain the death penalty to establish a moratorium on executions with a view to abolishing the death penalty. http://www.amnestyusa.org/our-work/issues/death-penalty/international-death-penalty/death-penalty-and-human-rights-standards .

2008 [accessed on 13th January 2012]; United Nations Security Council resolution 827 (1993), 25 May 1993, Adopted by the Security Council at its 3217th meeting. the Security Council decided that death penalty cannot be applied by the tribunals, even for the most serious crimes. This approach was followed by the UN Secretary General (SG), in the guidance note on 'UN Approach to Rule of Law Assistance'. The guidance note clearly states that "the UN will neither establish nor directly participate in any tribunal that allows for capital punishment". Guidance note of the Secretary General: UN Approach to Rule of Law Assistance available at http://www.unrol.org/files/RoL%20Guidance%20Note%20UN%20Approach%20FINAL.pdf [accessed on 13th January 2012] It is worth mentioning that the Rome Statute of the International Criminal Court did not include the death penalty as a sanction for crimes against humanity, genocide or war crimes, and the maximum punishment is 30 years of imprisonment. See Rome Statute of the International Criminal Court available at http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf [accessed on 13th January 2012]

Amnesty International: Zahlen und Fakten zur Todesstrafe[82]

Statistik für das Jahr 2011, veröffentlicht am 27.3.2012

Im Jahr 2011 wurde nur mehr in 20 von 198 Ländern hingerichtet. 2002 geschah dies noch in 31 Staaten, also ist das ein Rückgang von mehr als ein Drittel. Begnadigungen oder Umwandlungen von Todesurteilen wurden 2011 in 33 Ländern gegenüber 19 im Jahre 2010 registriert.

Die Bestrafung mit einem Todesurteil erfolgte im Iran wegen Ehebruch, homosexuellem Geschlechtsverkehr und Abfall vom Glauben, in Pakistan wegen Gotteslästerung, wegen "Hexerei" in Saudi Arabien, wegen Handel mit menschlichen Gebeinen in der Republik Kongo und wegen Drogendelikten in mehr als zehn Ländern.

Mindest drei Jugendliche - sie waren zum Zeitpunkt der Tat noch nicht 18 Jahre alt - wurden im Iran entgegen den internationalen Gesetzen hingerichtet.

Die meisten jener Länder, die Todesurteile durchführten, hielten sich nicht nach den internationalen Standards für einen fairen Prozess. In einigen Ländern bedeutet dies, "Geständnisse" durch Folter oder andere Nötigungen zu erpressen. Das trifft vor allem für Belarus, China, Iran, Irak, Nordkorea und Saudi-Arabien zu.

In Belarus, Japan und Vietnam werden Gefangene erst unmittelbar vor ihrer Hinrichtung davon in Kenntnis gesetzt, Familienangehörige und Verteidiger werden nicht informiert.

Öffentliche Hinrichtungen wurden 2011 aus Iran, Nordkorea, Saudi-Arabien und Somalia bekannt.

Ausländische Nationen werden unverhältnismäßig häufig mit einem Todesurteil bestraft, dies geschieht vor allem in China, Malaysien, Saudi-Arabien, Singapur und Thailand.

Staaten ohne Todesstrafe:

- abgeschafft für alle Straftaten 97
- abgeschafft in Friedenszeiten 8
- keine Anwendung in der Praxis 36
- insgesamt 141
- **Staaten mit Todesstrafe 57**

[82] Available online at http://todesstrafe.amnesty.at/zahlen_fakten.php

REGIONALER ÜBERBLICK

AFRIKA

Somalia, Süd-Sudan und Sudan führten Exekutionen durch. Sierra Leone erklärte und Nigeria bestätigte einen offiziellen Hinrichtungsstopp. Das Parlament von Benin brachte die Abschaffung der Todesstrafe durch Ratifikation des Zweiten Fakultativprotokolls zum UN-Zivilpakt auf den Weg.

AMERIKAS

Auf dem amerikanischen Kontinent waren die USA der einzige Staat, der Hinrichtungen durchführte. Die Anzahl fiel auf 43 herunter, verglichen mit 46 im Jahr 2010 und 71 Exekutionen im Jahr 2002. Es wurden 78 neue Todesurteile in den USA gefällt. Diese Zahl zeigt einen deutlichen Rückgang gegenüber dem Durchschnitt von 280 Todesurteilen in den 1980er und 1990er Jahren. 140 zum Tode verurteilte Personen wurden seit 1973 in den USA freigesprochen. Illinois schaffte als 16. US-Bundesstaat die Todesstrafe ab. Der Bundesstaat Oregon verkündete einen Hinrichtungsstopp.

Abgesehen von mindestens sechs neuen Todesurteilen (Guyana, Saint Lucia sowie Trinidad und Tobago) waren die Karibik und Südamerika im Jahr 2011 eine todesstrafenfreie Zone.

ASIEN und die PAZIFISCHE REGION

Mit der Ausnahme von fünf neuen Todesurteilen in Papua-Neuguinea verblieb die pazifische Region eine todesstrafenfreie Zone. In Japan wurden zum ersten Mal seit 19 Jahren keine Hinrichtungen verzeichnet. 2011 war das erste hinrichtungsfreie Jahr in Singapur. Die Mongolei brachte legislative Schritte zur Abschaffung der Todesstrafe ein, die im Frühjahr 2012 wirksam werden könnten.

EUROPA

Belarus war der einzige Staat in Europa und auf dem Gebiet der ehemaligen Sowjetunion, in dem Hinrichtungen stattfanden. Lettland unternahm alle einschlägigen Schritte für ein Ende der Todesstrafe und wurde am 1. Jänner 2012 das 97. Land der Erde, das die Todesstrafe vollständig abgeschafft hat.

NAHER OSTEN UND NORDAFRIKA

Vier Länder - Irak, Iran, Jemen und Saudi Arabien - zeichnen verantwortlich für 99 Prozent aller nachgewiesenen Hinrichtungen im Nahen Osten und Nordafrika.

Aus dem Iran erhielt Amnesty International glaubhafte Berichte über eine hohe Anzahl unbestätigter oder sogar geheimer Exekutionen, durch die sich die Zahl der Hinrichtungen fast verdoppeln würde.

HINRICHTUNGSMETHODEN, die 2011 angewandt wurden

- **Enthaupten:** Saudi-Arabien
- **Giftspritze:** China, Taiwan, USA
- **Erschießen:** Belarus, China, Jemen, Nordkorea, Palästinensische Autonomiegebiete, Somalia, Vereinigte Arabische Emirate, Vietnam
- **Erhängen:** Ägypten, Afghanistan, Bangladesch, Irak, Iran, Malaysia, Nordkorea, Palästinensische Autonomiegebiete, Sudan, Südsudan

Tabellen und Karten über Todesurteile und Hinrichtungen, über Länder mit und ohne Todesstrafe per 2011 sowie Hintergrundinformationen finden Sie unter
http://www.amnesty.at/presseaussendung

Statistik für das Jahr 2010 veröffentlicht am 24.3.2011

Ein Überblick zeigt, dass während Mitte der 1990er Jahre in jedem der Berichtsjahre Exekutionen in durchschnittlich 40 Ländern stattfanden, im Jahr 2010 sind jedoch Urteilsvollstreckungen aus nur 23 Ländern bekannt. Die Zahl der Länder, in denen die Todesstrafe per Gesetz oder in der Praxis abgeschafft wurde, stieg während des vergangenen Jahrzehnts beträchtlich an, und zwar von 108 im Jahr 2001 auf zuletzt 139. Und hier das Ergebnis für 2010:

Staaten ohne Todesstrafe

- abgeschafft für alle Straftaten 96
- abgeschafft in Friedenszeiten 9
- keine Anwendung in der Praxis 34
- insgesamt 139
- **Staaten mit Todesstrafe 58**

Wenigstens 2024 neue Todesurteile wurden 2010 in 67 Ländern verhängt; dies ist der niedrigste Wert, der anhand der Recherchen als gesichert gelten kann. Weltweit gab es Ende 2010 wenigsten 17.833 zum Tode Verurteilte.

Hinrichtungen 2010

In folgenden Ländern: Ägypten 4, Äquatorialguinea 4, Bahrain 1, Bangladesch >9, Belarus 2, Botsuana 1, China (Tausende), Irak >1, Iran >252, Japan 2, Jemen >53, Libyen >18, Malaysia

>1, Nordkorea >60, Palästinensische Autonomiegebiete 5, Saudi-Arabien >27, Singapur +, Somalia >8, Sudan >6, Syrien >17, Taiwan 4, USA 46, Vietnam +.

Folgende Hinrichtungsmethoden wurden im vergangenen Jahr angewendet: Enthaupten (Saudi-Arabien), Elektrischer Stuhl (USA), Erhängen (Ägypten, Bangladesch, Botsuana, Irak, Iran, Japan, Malaysia, Nordkorea, Singapur, Sudan, Syrien), Giftinjektion (China, USA), Erschießen (Äquatorialguinea, Bahrain, Belarus, China, Jemen, Nordkorea, Palästinensische Autonomiegebiete, Somalia, Taiwan, USA, Vietnam). Es gab keine Berichte über Urteilsvollstreckungen durch Steinigung, jedoch sollen der Iran, der nigerianische Bundesstaat Bauchi sowie Pakistan neue Urteile verhängt haben. Mindestens zehn Frauen und vier Männern drohte Ende 2010 in Iran der Vollzug der Todesstrafe durch Steinigung.

REGIONALER ÜBERBLICK

Amerikanischer Kontinent

Die USA als das einzige Land hier, das Gefangene hinrichtet, fällte 110 Todesurteile. Das entspricht etwa einem Drittel der Hinrichtungen Mitte der 1990er Jahre. Im März 2011 wurde Illinois zum 16. US-Staat ohne Todesstrafe.

Asien-Pazifik

Von China, Malaysia, Nordkorea, Singapur und Vietnam stehen keine vollständigen Angaben zur Verfügung, obwohl in diesen Ländern Hinrichtungen durchgeführt wurden. Den zur Verfügung stehenden Informationen nach vollstreckten fünf andere Staaten mindestens 82 Todesurteile. Im Jänner 2010 setzte der Präsident der Mongolei die Todesstrafe aus.

Europa und Zentralasien

Im März 2010 exekutierte Belarus zwei Gefangene, drei weitere Menschen wurden zum Tod verurteilt.

Nahost und Nordafrika

Hier wurden im Jahr 2010 insgesamt weniger Todesurteile und Exekutionen verzeichnet. Wurde die Todesstrafe aber angewandt, so geschah dies oft nach unfairen Prozessen und für Delikte wie Drogenhandel oder Ehebruch. Die iranischen Behörden bestätigten die Hinrichtung von 252 Gefangenen, darunter fünf Frauen und ein zur Tatzeit Jugendlicher. Glaubwürdigen Quellen zufolge fanden jedoch mindestens 300 weitere Exekutionen statt, die meisten wegen angeblicher Drogendelikte. 14 Gefangene wurden öffentlich hingerichtet.

Südliches Afrika

Im Februar 2010 schaffte Gabun die Todesstrafe endgültig ab. Damit sind heute insgesamt 16 Länder der Afrikanischen Union ohne Todesstrafe. Nur vier Länder haben Todesurteile vollstreckt: Botswana, Äquatorialguinea, Somalia und der Sudan.

Listen und Karten über Hinrichtungen und Todesurteile, Länder spezifisch aufgeschlüsselt sowie ein Hintergrundbriefing finden sie auf
http://www.amnesty.at/index.php?id=1014

Statistik für das Jahr 2009 - veröffentlicht April 2010

In 18 Staaten wurden mindestens 714 Menschen hingerichtet (diese Zahl beinhaltet nicht die tausenden Hinrichtungen, die in China stattfanden)
In 56 Staaten wurden mindestens 2001 Menschen zum Tode verurteilt.
Mehr als zwei Drittel aller Länder haben die Todesstrafe per Gesetz oder in der Praxis abgeschafft. Die Zahlen sind wie folgt:

- abgeschafft für alle Straftaten 95
- abgeschafft in Friedenszeiten 9
- keine Anwendung in der Praxis 35
- halten an der Todesstrafe fest 58

Obwohl 58 Staaten noch an der Todesstrafe festhalten, sind es gerade nur 18 Staaten, die sie auch tatsächlich praktizieren; das sind weniger Länder als je zuvor. An China, der am häufigsten hinrichtenden Nation, reihen sich der Iran mit mind. 388 Exekutionen, der Irak mit mind. 120, Saudi Arabien mit mind. 69 und die USA mit 52.

Laut Amnesty Bericht waren die Todesurteile des Jahres 2009 stark geprägt von der politischen Absicht, Gegner zum Schweigen zu bringen und das politische Tagesgeschehen in China, im Iran und Sudan zu unterstützen. Allein 112 Exekutionen wurden im Iran zwischen der Präsidentschaftswahl am 12. Juni und dem Amtsantritt von Mahmoud Ahmadinejad am 5. August ausgetragen.

Aus dem Bericht geht weiters hervor, dass Todesurteile oft in sehr diskriminierender Weise - nach unfairen Prozessen, gegen Arme sowie gegen ethnische und religiöse Minderheiten - ausgesprochen wurden.

Zusammenfassung der einzelnen Regionen:

Asien: 26 Hinrichtungen fanden in folgenden Ländern statt - Bangladesh, Japan, Nordkorea, Malaysia, Singapur, Thailand und Vietnam. Afghanistan, Indonesien, Mongolei und Pakistan exekutierten nicht; es war in diesen Ländern das erste hinrichtungsfreie Jahr seit langer Zeit.

Mittlerer Osten und Nordafrika: mindestens 624 Hinrichtungen wurden in sieben Staaten durchgeführt: Ägypten, Iran, Irak, Libyen, Saudi-Arabien, Syrien und Jemen. In Saudi-Arabien und dem Iran wurden sieben Menschen, die zum Zeitpunkt der Tat unter 18 Jahre alt waren, exekutiert. Algerien, Libanon, Marokko, West Sahara und Tunesien behielten das langjährige Moratorium bei.

Europa: Exekutionen gab es keine; der ehemalige Sowjetstaat Belarus ist der letzte in Europa, der noch die Todesstrafe durchführt. 2008 wurden 4 Menschen exekutiert.

Afrika: Botswana und Sudan waren die einzigen Staaten, die Hinrichtungen durchführten. Die größte Umwandlung von Todesurteilen, die Amnesty jemals bekannt wurde, geschah in Kenia. Die Regierung kündigte an, mehr als 4.000 Todesurteile in Gefängnisstrafen umzuwandeln.

Kontinent Amerika: hier sind die USA die einzige Nation, die Exekutionen austrägt. Weiterführende Informationen: http://www.amnesty.org/en/library/info ACT50/001/2010/en

---

Statistik für das Jahr 2008 - veröffentlicht März 2009

Auch im Jahr 2008 rücken wir einer Welt ohne Todesstrafe etwas näher.

Bei der UN Generalversammlung im Dezember 2008 stimmte eine große Mehrheit der Staaten der zweiten Resolution für ein Moratorium mit Blick auf die vollkommene Abschaffung der Todesstrafe zu. Die Annahme dieser Resolution festigt den stetigen Fortschritt in diese Richtung von drei Jahrzehnten. Sie ist weiters ein wichtiges Werkzeug, um jene Länder, die noch an der Todesstrafe festhalten, anzuspornen, die Anwendung dieser schwersten aller Strafen zu überdenken und letzten Endes zu deren Abschaffung zu gelangen.

Europa und **Zentralasien** sind im Grunde genommen ohne Todesstrafe, nachdem auch Usbekistan mit 01.01.2008 die Todesstrafe für alle Straftaten abgeschafft hat. Ein einziges Land fehlt noch und das ist **Belarus**.

Auf dem amerikanischen Kontinent ist es nur ein Staat - die **Vereinigten Staaten von Amerika (USA)** - die weiterhin exekutieren. Aber selbst die USA bewegten sich im Jahr 2008 etwas weg von der Todesstrafe. Seit 1995 gab es die niedrigste Anzahl an Hinrichtungen.

Mehr als zwei Drittel aller Staaten weltweit haben die Todesstrafe per Gesetz oder in der Praxis abgeschafft. Darüber hinaus konnte Amnesty International registrieren, dass nur in 25 der 59 Staaten, die die Todesstrafe beibehalten haben, auch tatsächlich Hinrichtungen durchgeführt wurden. Dies zeigt eine zunehmende Übereinstimmung auf internationaler Ebene und bestätigt gleichzeitig, dass die Todesstrafe mit den Menschenrechten nicht in Einklang gebracht werden kann.

Den positiven Entwicklungen stehen jedoch eine Anzahl hartnäckiger Herausforderungen gegenüber. Staaten in **Asien** führten 2008 mehr Exekutionen durch als der Rest der übrigen Welt. Das Gebiet mit der zweithöchsten Anzahl nachgewiesener Hinrichtungen war der **Mittlere Osten**.

So weit bekannt ist, wurden 2008 mindest 2.390 Menschen in 25 Ländern hingerichtet und mindest 8.864 Menschen in 52 Ländern zum Tode verurteilt.

Die häufigsten Hinrichtungsarten waren Enthaupten (Saudi Arabien), Elektrischer Stuhl (USA), Hängen (Bangladesch, Botswana, Ägypten, Iran, Irak, Japan, Malaysia, Pakistan, St. Kitts & Nevis), Giftspritze (China, USA), Erschießen (Afghanistan, Belarus, China, Indonesien, Iran, Mongolei, Vietnam), Steinigen (Iran)

Dem Trend des vergangenen Jahres wurden auch 2008 **China, Iran, Saudi Arabien, Pakistan** und die **Vereinigten Staaten von Amerika** gerecht. Diese fünf Staaten trugen 93% aller Exekutionen weltweit aus. In Zahlen heißt das China 1.718(470), Iran 346(317), Saudi Arabien 102(143), USA 37(42), Pakistan 36(135). Weitere Hinrichtungen gab es in Irak 34(33), Vietnam 19(25), Afghanistan 17(15), Nordkorea 15, Japan 15, Jemen 13(15), Indonesien 10, Libya 8(9), Bangladesh 5, Belarus 4, Ägypten 2, Malaysia1, Mongolei 1, Sudan 1, Syrien 1, Vereinigten Arabischen Emirate 1, Bahrain 1, Botswana 1, Singapur 1 und St. Kitts und Nevis 1. Die Zahlen sind Mindestangaben, jene in der Klammer betreffen zum Vergleich das Jahr 2007.

In China, Belarus, in der Mongolei und in Nordkorea wird die Todesstrafe geheim gehalten.

Nun die Liste der Länder ohne und mit Todesstrafe:

Abgeschafft für alle Straftaten	92
Abgeschafft in Friedenszeiten	10
Keine Anwendung in der Praxis	36
Insgesamt	**138**
Länder mit Todesstrafe	59

Index: ACT 50/003/2009

Downloads zum Thema:
karte_hinrichtungen-und-todesurteile-2008.pdf
karte_staaten-mit-und-ohne-todesstrafe.pdf

1)Informationen zum Abschaffungsstand der Todesstrafe in allen Ländern der Welt:
http://www.amnesty-todesstrafe.de/files/reader_wenn-der-staat-toetet_laenderliste.pdf

2)Allgemeine Zahlen und Fakten zum Thema Todesstrafe:
http://www.amnesty-todesstrafe.de/files/reader_wenn-der-staat-toetet.pdf

---

Statistik für das Jahr 2007 - veröffentlicht April 2008

Mehr als zwei Drittel aller Staaten haben die Todesstrafe per Gesetz oder in der Praxis abgeschafft. Im Jahr 2007 sind mindestens **1.252** Gefangene in **24** Staaten exekutiert worden. Damit hat sich die Zahl der Hinrichtungen gegenüber 2006 (1.591) verringert. Zum Tode verurteilt wurden im vergangenen Jahr **3.347** Menschen (2005: 3.861) in **51** Ländern. Diese Angaben beinhalten allerdings nur die Amnesty International zur Kenntnis gelangten Fälle; die tatsächlichen Zahlen liegen mit Sicherheit höher.

Wie schon in den Vorjahren gilt auch für 2007, dass die weitaus meisten registrierten Hinrichtungen in nur einigen wenigen Staaten vollzogen worden sind. Insgesamt ist in der **VR China** im Jahr 2007 mindestens **470**-mal die Todesstrafe vollstreckt worden. Diese Minimalzahl hat Amnesty International auf der Grundlage öffentlich zu-gänglicher Informationen recherchiert. Die in den USA ansässige Organisation "Dui Hua Foundation" schätzt die Zahl der Exekutionen hingegen auf 6.000 und stützt sich dabei auf Angaben lokaler chinesischer Behörden. In **Iran** betrug die Zahl der Hinrichtungen wenigstens **317** gegenüber 177 in 2006. In **Saudi-Arabien** wurden mindestens **143** Menschen exekutiert (2006: 39) und in **Pakistan 135** (2006: 82). Die Zahl der vollstreckten Todesurteile in diesen letztgenannten drei Staaten lag somit beträchtlich höher als noch im Vorjahr.

In den USA sank die Zahl im Vergleich zum Vorjahr von 53 auf **42.** Damit fanden 88 Prozent aller Hinrichtungen, von denen Amnesty International 2007 weltweit erfahren hat, allein in diesen fünf Staaten statt. Pro Kopf der Bevölkerung wurden im vergangenen Jahr die meisten Todesurteile in Saudi-Arabien vollstreckt, gefolgt von Iran und Libyen.

Die Zahl der weltweit zum Tode Verurteilten ist schwer einzuschätzen. Ende 2007 wurde sie - beruhend auf Informationen von Menschenrechtsgruppen, Medienberich-ten und einigen wenigen offiziellen Zahlen - mit etwa 27.500 beziffert. Auch hier ist davon auszugehen, dass die tatsächliche Zahl höher liegt.

Einen umfassenden Bericht in englischer Sprache finden Sie unter
http://www.Amnesty.org/en/death-penalty

Pressetext mit Grafik -> Statistik_2007
Weltkarte -> grafik_welt_2007.pdf
Statistik -> grafik_welt_statistik.pdf

Statistik für das Jahr 2006 - veröffentlicht April 2007

Im Jahre 2006 wurden mindestens 1.591 Menschen hingerichtet und wenigstens 3.861 Todesurteile ausgesprochen. Derzeit sollen sich zwischen 19.000 und 25.000 Menschen im Todestrakt befinden und auf ihre Hinrichtung warten.

- **Aktuelle Zahlen und Fakten zur Todesstrafe**
  Todesstrafe Zahlen Fakten07.pdf
- **Länderliste zu Hinrichtungen und Todesurteilen**
  Hinrichtungen und Todesurteile 2006.pdf
- **WELTKARTE - Todesurteile und Hinrichtungen**
  WELTKARTE Todesurteile und Hinrichtungen 2006 04 2007.pdf
- **Zahlen und Fakten zur Abschaffung und Beibehaltung der Todesstrafe**
  Todesstrafe 2006.pdf
- **WELTKARTE - Staaten mit und ohne Todesstrafe**
  WELTKARTE Staaten mit und ohne Todesstrafe 04 2007.pdf
- **WELTKARTE - Staaten, die das zweite Fakultativprotokoll zum UN-Zivilpakt gezeichnet haben**
  WELTKARTE 2te un protokoll.pdf
- **Liste internationaler Verträge - Wer ist dabei?**
  Unterzeichnungen und Ratifikationen von internationalen Verträgen, aufgeschlüsselt auf die einzelnen Staaten finden Sie unter folgendem Link:
  http://www.web.Amnesty.org/pages/deathpenalty-treaties-eng

Amnesty International: The Use of the Death Penalty in 2011[83]

"The evidence presented to me by former prosecutors and judges with decades of experience in the criminal justice system has convinced me that it is impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography or economic circumstance, and that always gets it right."
Governor Pat Quinn of Illinois, USA, 9 March 2011

In early 2011, Governor Pat Quinn spoke eloquently concerning his decision to seek an end to the death penalty in the US state of Illinois, but he was not the only person to speak out against executions. Around the world politicians, academics, lawyers and many others raised their voices against this most cruel, inhuman and degrading punishment.

The new Moroccan Constitution adopted in 2011 enshrines the right to life in Article 20. In June, just prior to the referendum vote that approved the new Constitution, the President of the Committee for the Revision of the Constitution, Abdelatif Mennouni, said "[t]his article is meant to put an end to executions."[84]

In October 2011, at a public forum to mark the World Day against the Death Penalty in Malaysia, Law Minister Nazri Aziz said in his opinion the civil society initiative was a timely effort, and was in line with ongoing efforts by the government to review outdated laws and to introduce new laws which complied with the principles of human rights.[85] While Malaysia continues to use the death penalty, this was a strong statement from a senior government official signaling possible changing attitudes.

Speaking at the UN in November 2011, the Secretary General of the Iranian Judiciary's High Council for Human Rights, Mohammad Javad Larijani, discussed limiting the use of the death penalty, saying: "I think there are ways to bring down the number of executions. More than 74 per cent of executions in Iran are stemming from drug trafficking related crimes. Whether it is

[83] Available online at http://www.amnesty.at/service_links/presse/pressemitteilungen/enthaupten_haengen_erschiessen_alarmierende_anzahl_an_hinrichtungen/

[84] "Maroc: la voie à l'abolition de la peine de mort est ouverte", *Le Figaro*, 30 June 2011, http://www.lefigaro.fr/international/2011/06/29/01003-20110629ARTFIG00730-maroc-la-voie-a-labolition-de-la-peine-de-mortest-ouverte.php (accessed 28 February 2012).

[85] "Public Opinion Will Be Taken Into Account Before Abolishing Death Penalty - Nazri", *Malaysia News* 13 October 2011, http://www.mymalaysianews.com/malaysia/1549-public-opinion-will-be-taken-intoaccount-before-abolishing-death-penalty-nazri (accessed 28 February 2012).

correct or not, there is a big question: 'Did this harsh punishment bring the crimes down or not?' In fact, [it] did not bring it down."[86]

Statements such as these from government officials reflect the global momentum toward abolition of the death penalty and are important expressions of the leadership that is needed to achieve this goal. But voices in civil society also contributed significantly to the debate.
In China, Peking University Law Professor Zhang Qianfan argued that if the public only has information about a small number of sensationalized death penalty cases, any real debate will be stifled. He noted "[o]nly when the number of executions is made public can China's rational debate on abolition of the death penalty begin."[87]

In December 2011 the Japan Federation of Bar Associations decided to establish a committee to pursue the abolition of the death penalty.[88] The Federation stated in a declaration adopted at its annual human rights meeting that "[t]he abolition of the death penalty has become an unshakable international trend, and now is the time to launch a social debate about its termination."[89]

Strongest, however, may be the voices of those who have lost loved ones to or have been victims of violent crime, and of those who have spent time on death row. In Texas in the USA, Rais Bhuiyan campaigned unsuccessfully for clemency for Mark Stroman, the man who shot him at point-blank range in a post-9/11 hate crime. He argued, "I never hated Mark. My religion teaches that forgiveness is always better than vengeance."[90]

Zimbabwe Defence Minister Emmerson Mnangagwa traces his opposition to the death penalty to his own experience as an inmate on death row before Zimbabwe's independence. "My views on the death penalty are, to a large extent, informed by the harrowing experiences I went through while on death row, the sanctity of life and the need to rehabilitate offenders."[91]

These voices echo the developments recorded by Amnesty International in 2011, which demonstrate that the global trend towards abolition of the death penalty continued. In 2011, Amnesty International recorded executions in 20 countries compared to 23 in 2010. Last year,

---

[86] Number of executions in Iran can be reduced, says official", *United Nations Radio*, 16 November 2011, http://www.unmultimedia.org/radio/english/2011/11/number-of-executions-in-iran-can-bereduced-says-official/ (accessed 28 February 2012).
[87] Zhang Qianfan, "Death Penalty Numbers Are Not 'State Secrets'", *Southern Metropolis Daily*, 9 September 2011.
[88] "Japan bar federation to establish panel for abolishing death penalty", *Japan Times*, 18 December 2011, http://www.japantimes.co.jp/text/nn20111218x3.html (accessed 26 February 2012).
[89] Keiji Hirano, "Lawyer federation urges debate to end death penalty", Japan Innocence & Death Penalty Research Center, http://www.jiadep.org/Nichibenren.html (accessed 26 February 2012).
The Independent, 9 July 2011, http://www.independent.co.uk/news/world/americas/i-never-hated-markmy-religion-teaches-that-forgiveness-is-always-better-than-vengeance-2309526.html (accessed on 1 March 2012).
[91] "Death penalty should not have room in new charter", *Newsday*, 19 October 2011.

676 executions were recorded, an increase from 2010 and largely attributable to a significant increase in executions in three countries – Iran, Iraq and Saudi Arabia. Recorded death sentences were down from the previous year.

Progress was recorded in all regions of the world in 2011. While the USA was the only country in the Group of Eight (G8)9 to have carried out executions, Illinois became its 16th abolitionist state, and in November the Governor of Oregon, John Kitzhaber, announced that he would not allow any further executions in that state during his time in office. Elsewhere in the Americas, fewer death sentences were handed down overall, by fewer Caribbean countries.

In the Asia-Pacific region, no executions were recorded during the year in Japan – for the first time in 19 years – and Singapore, countries where the authorities have shown strong support for capital punishment. Significant debates on the death penalty and its abolition were recorded in countries such as China, Malaysia, South Korea and Taiwan.

In sub-Saharan Africa, Sierra Leone declared an official moratorium on executions; it was confirmed that a moratorium was in place in Nigeria. The Constitutional Review Commission of Ghana recommended abolition of the death penalty in the new Constitution. Senior politicians voiced their support for abolition in Burkina Faso and Zimbabwe. At its Universal Periodic Review at the UN Human Rights Council, the delegation of Swaziland described its status as "retentionist in law, abolitionist in practice".

Decreases in the use of the death penalty were recorded in Lebanon, the Palestinian Authority and Tunisia, but the momentous change in the Middle East and North Africa region in 2011 made it even more difficult to monitor numbers of executions and sentences.

Belarus continued to be the only country in Europe and the former Soviet Union to have carried out executions. At the end of November, the parliament of Latvia abolished the death penalty for extraordinary crimes, making the country the 97th abolitionist for all crimes as of 1 January 2012.

GLOBAL TREND TOWARDS ABOLITION

- The USA was the only country in the G8 to have carried out executions in 2011. Three countries in the G20 carried out executions in 2011: China, Saudi Arabia and the USA.
- The USA and Belarus were the only two of the 56 Member States of the Organization for Security and Cooperation in Europe to have carried out executions in 2011.
- Four of the 54 Member States of the African Union were known to have carried out judicial executions in 2011: Egypt, Somalia, Sudan and South Sudan. Thirty-eight Member States are abolitionist in law or practice.
- Two of the 54 Member States of the Commonwealth were known to have carried out executions in 2011: Bangladesh and Malaysia.

- Nine of 22 Member States of the League of Arab Nations carried out executions in 2011: Egypt, Iraq, Palestinian Authority, Saudi Arabia, Somalia, Sudan, Syria, United Arab Emirates and Yemen.
- Two of the 10 Member States of the Association of Southeast Asian Nations were believed to have carried out executions in 2011: Malaysia and Viet Nam.
- 175 of the 193 Member States of the United Nations were execution-free in 2011.

On 11 October 2011 Honduras became the 12th State Party to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Also in October Latvia passed legislation to ratify the 13th Protocol to the European Convention on Human Rights, which provides for the abolition of the death penalty in all circumstances. Legislation to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which provides for the abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect, was adopted in Benin; a similar bill remained pending before the parliament of Mongolia at the end of the year.[92]

Positive steps towards restricting the use of the death penalty were recorded in several countries, including the reduction of the number of crimes punishable by the death penalty in China[93], Gambia and Taiwan.

In 2011 commutations or pardons of death sentences were recorded in 33 countries: Algeria, Bahrain, Barbados, Cameroon, China, Ethiopia, Gambia, India, Iran, Jordan, Kenya, Kuwait, Malawi, Mali, Mauritania, Mongolia, Morocco/Western Sahara, Myanmar, Nigeria, Saudi Arabia, Sierra Leone, Singapore, South Korea, South Sudan, Sudan, Thailand, Tunisia, Uganda, United Arab Emirates, USA, Viet Nam, Yemen and Zambia.

Exonerations[94] were recorded in 12 countries: Barbados, Botswana, China, India, Sierra Leone, Singapore, Sri Lanka, Taiwan[95], United Arab Emirates, USA, Yemen and Zambia in 2011.

MORATORIUM ON EXECUTIONS: WHY?

[92] The G8 is made up of heads of government from Canada, France, Germany, Italy, Japan, the Russian Federation, the United Kingdom and the United States. The European Union is also represented at Summits by both the residents of the European Commission and of the European Council.
[93] The State Great Khural, the Mongolian Parliament, voted to ratify the Second Optional Protocol to the ICCPR on 5 January 2012.
[94] On 25 February 2011, China announced it would reduce the crimes punishable by death by 13, from 68 to 55. However, the amendment to the criminal code also stipulated that criminals convicted of "forced organ removal, forced organ donation or organ removal from juveniles" could face punishment for homicide, which can carry a sentence of death.
[95] Exoneration is the process where, after sentencing and the conclusion of the appeals process, the convicted is later freed from blame or acquitted of the criminal charge, and therefore is regarded as innocent in the eyes of the law.

During his first term in office, Governor John Kitzhaber authorized the only two executions that have been carried out in Oregon since the USA resumed executions in 1977. Both were of inmates who had given up appeals against their death sentences. In 2011, during his third term in office, Governor Kitzhaber announced a moratorium on executions in Oregon.

In a statement released on 22 November 2011, Governor Kitzhaber said he was refusing to be a part of "this compromised and inequitable system any longer" and that Oregon's death penalty was "neither fair nor just", nor "swift or certain", and that it was a "perversion of justice that the single best indicator of who will and who will not be executed" in Oregon is whether a prisoner "volunteers" for execution by giving up their appeals. He noted that many judges, prosecutors and legislators, as well as family members of victims of crimes were now in agreement that Oregon's capital justice system was "broken".

Governor Kitzhaber said that it was his hope and intention that the moratorium on executions he was imposing would bring about "a long overdue re-evaluation of our current policy and our system of capital punishment" because "we can no longer ignore the contradictions and inequities of our current system". He concluded by saying that he was sure that Oregon can find a better solution, one that ensures public safety and supports the victims of crime and their families.

THE DEATH PENALTY IN 2011: GLOBAL NUMBERS

At least 20 countries were known to have carried out executions in 2011. Even including newly-independent South Sudan, this is a reduction from 2010, when 23 countries were reported to have implemented death sentences, and shows a steep decline against the figure recorded a decade ago, when 31 countries were known to have carried out executions.

REPORTED EXECUTIONS IN 2011

Afghanistan (2), Bangladesh (5+), Belarus (2), China (+), Egypt (1+), Iran (360+), Iraq (68+), Malaysia (+), North Korea (30+), Palestinian Authority (3 in Gaza[96]), Saudi Arabia (82+), Somalia (10: 6 by the Transitional Federal Government; 3 in Puntland; 1 in Galmudug), South Sudan (5), Sudan (7+), Syria (+), Taiwan (5), United Arab Emirates (1), USA (43), Viet Nam (5+), Yemen (41+).

At least 676 executions were known to have been carried out worldwide in 2011, an increase on the 2010 figure of at least 527 executions worldwide. The increase is largely due to a significant increase in judicial killings in Iran, Iraq and Saudi Arabia. However, the 676 figure does not include the thousands of people who were believed to have been executed in China in 2011. Beginning in the 2009 report, Amnesty International ceased to publish its estimates on the use of

[96] In January 2011 the President of Taiwan granted a posthumous pardon to Chiang Kuo-ching, who was executed in 1997.

the death penalty in China, where such figures are considered a state secret. Amnesty International renews its challenge to the Chinese authorities to publish figures for the number of people sentenced to death and executed each year, to confirm their claims that there has been a significant reduction in the use of the death penalty in the country over the last four years.

Amnesty International has also received credible reports of a large number of unconfirmed or even secret executions in Iran, which would almost double the number of officially acknowledged executions.

Official figures on the use of the death penalty in 2011 were available only in a small number of countries. In Belarus, China, Mongolia and Viet Nam data on the use of the death penalty continued to be classified as a state secret. Little or no information was available for Egypt, Eritrea, Libya, Malaysia, North Korea and Singapore. In Belarus, Japan and Viet Nam prisoners were not informed of their forthcoming execution, nor were their families and lawyers. In Belarus and Viet Nam the bodies of the executed prisoners were not returned to their families for burial.

REPORTED DEATH SENTENCES IN 2011

Afghanistan (+), Algeria (51+), Bahrain (5), Bangladesh (49+), Belarus (2), Botswana (1), Burkina Faso (3), Cameroon (+), Chad (+), China (+), Congo (Republic of) (3), Democratic Republic of Congo (+), Egypt (123+), Gambia (13), Ghana (4), Guinea (16), Guyana (3+), India (110+), Indonesia (6+), Iran (156+), Iraq (291+), Japan (10), Jordan (15+), Kenya (11+), Kuwait (17+), Lebanon (8), Liberia (1), Madagascar (+), Malawi (2), Malaysia (108+), Mali (2), Mauritania (8), Mongolia (+), Morocco/Western Sahara (5), Myanmar (33+), Nigeria (72), North Korea (+), Pakistan (313+), Palestinian Authority (5+: 4 in Gaza; 1 in West Bank), Papua New Guinea (5), Qatar (3+), Saint Lucia (1), Saudi Arabia (9+), Sierra Leone (2), Singapore (5+), Somalia (37+: 32+ by the Transitional Federal Government; 4 in Puntland; 1 in Galmudug), South Korea (1), South Sudan (1+), Sri Lanka (106), Sudan (13+), Swaziland (1), Syria (+), Taiwan (16), Tanzania (+), Thailand (40), Trinidad and Tobago (2), Uganda (5), United Arab Emirates (31+), USA (78), Viet Nam (23+), Yemen (29+), Zambia (48), Zimbabwe (1+).

At least 1,923 people were known to have been sentenced to death in 63 countries in 2011. This is the minimum figure that can be safely inferred from Amnesty International's research and represents a decrease from the 2010 figure of at least 2,024 death sentences worldwide.

At least 18,750 people were under sentence of death worldwide at the end of 2011, which is the minimum figure based on numbers Amnesty International obtained by country.

The following methods of executions were used in 2011: beheading (Saudi Arabia), hanging (Afghanistan, Bangladesh, Egypt, Iran, Iraq, Malaysia, North Korea, Palestinian Authority

(Gaza), South Sudan, Sudan), lethal injection (China, Taiwan, USA), and shooting (Belarus, China, North Korea, Palestinian Authority (Gaza), Somalia, United Arab Emirates, Viet Nam, Yemen).

According to official reports, at least three people were executed in Iran for crimes that were committed when they were below 18 years of age, in violation of international law; unofficial reports indicate that there may have been seven such cases. One person who was officially described as a "juvenile" was executed in Saudi Arabia. Death sentences were imposed on three young men in Mauritania for crimes committed when they were under 18 years of age, but the punishment was commuted to twelve years imprisonment on appeal. Death sentences were confirmed for two juvenile offenders in Sudan. In Yemen four people, who could have been below 18 years of age when the crime was committed, were at imminent risk of execution. Often the actual age of the offender is in dispute if no clear evidence exists, such as a certificate of registration at birth.[97] Amnesty International remained concerned that in Nigeria, Saudi Arabia and Yemen persons who were juveniles at the time the alleged crimes were committed remained in detention under a sentence of death. There were no reports of judicial executions carried out by stoning, or any new sentences of death by stoning. However, public executions were known to have been carried out in Iran, North Korea, Saudi Arabia and Somalia.

Amnesty International remained concerned that, in the majority of countries where people were sentenced to death or executed, the death penalty was imposed after proceedings that did not meet international fair trial standards, often based on "confessions" that were allegedly extracted through torture or other duress. This was particularly the case in Belarus, China, Iran, Iraq, North Korea, and Saudi Arabia. In Iran and Iraq, some of these "confessions" were then broadcast on television before the trial took place, further breaching the defendants' rights to presumption of innocence.

The mandatory death penalty continued to be used in India, Iran, Malaysia, Pakistan, Singapore, Trinidad and Tobago and Zambia. Mandatory death sentences are inconsistent with human rights protections because they do not allow any possibility of taking into account the defendant's personal circumstances or the circumstances of the particular offence.

In 2011 people continued to be sentenced to death or executed for crimes that did not involve the intention to kill resulting in the loss of life, therefore not meeting the threshold of "most serious crimes" as prescribed by Article 6 of the ICCPR. The death penalty was known to have been used to punish drug-related offences in countries such as China, India, Indonesia, Iran, Malaysia, Pakistan, Saudi Arabia, Singapore, Thailand, United Arab Emirates and Yemen.

[97] By the Hamas *de facto* administration.

Adultery and sodomy (Iran), religious offences such as apostasy (Iran) and blasphemy (Pakistan), "sorcery" (Saudi Arabia), the trafficking of human bones (Republic of Congo) and economic crimes (China), as well as rape (Saudi Arabia) and forms of "aggravated" robbery (Kenya, Zambia), were also punished with death sentences in 2011. Finally, different forms of "treason", "acts against national security" and other "crimes against the state" (such as "moharebeh" – enmity against God – in Iran), whether or not they led to a loss of life, were punished with death sentences in 2011 (Gambia, Kuwait, Lebanon, North Korea, Palestinian Authority and Somalia). In North Korea death sentences are often imposed even though the alleged crime is not subject to a death sentence under domestic law. Two countries – Afghanistan and the United Arab Emirates – resumed executions in 2011, moving against the global trend towards abolition of the death penalty. The scope of the death penalty was known to have been expanded, in contravention of international human rights standards, in Bangladesh, China, Egypt, India, Iran, Nigeria and Syria.

Of concern during 2011 was the increased use and pursuit of the death penalty by military courts and tribunals, including against civilians, in countries such as Bahrain, Democratic Republic of Congo, Egypt, Lebanon, Palestinian Authority (in the West Bank and Gaza), Somalia and the USA.

Geneva, 23 November 2011

Statement by the International Commission against the Death Penalty on the Introduction of a Moratorium on the Use of the Death Penalty in Oregon, USA[98]

The International Commission against the Death Penalty (ICDP) has learnt with great satisfaction that the governor of the US State of Oregon has announced a moratorium on the use of the death penalty in that state.

ICDP congratulates and highly praises the decision taken by Governor John Kitzhauber to stay the execution of death row inmate Gary Haugen as well as any other executions, which might have been scheduled during his term as Governor. In his strong statement, Governor Kitzhauber characterized the death penalty system as compromised and inequitable. He made the decision with a solid base of information and experience. During his two previous terms as Governor from 1995 to 2003, Kitzhauber did not intervene in the execution of two death row prisoners, a decision he has questioned ever since. He said further: "I do not believe that those executions made us safer; certainly I don't believe they made us nobler as a society. And I simply cannot participate once again in something I believe to be morally wrong. "

The death penalty undermines human dignity and violates the right to life proclaimed by the Universal Declaration of Human Rights. The Death Penalty should not be applied whatever the circumstances, regardless of the gravity of the crime. Furthermore, there exists no conclusive evidence on the deterrent effect of the death penalty.

Oregon has executed two people since its voters approved the death penalty in 1984. The last execution took place in 1997. Currently, there are 37 inmates on death row.

ICDP encourages Governor Kitzhauber to commute the death sentences of the 37 remaining death row prisoners to prison terms and to lead the Oregon legislature to permanently abolish capital punishment in the state.

Federico Mayor

President of the International Commission against the Death Penalty

[98] Statements courtesy of the Secretariat of the ICDP.

Geneva, 7 December 2011

Statement by the International Commission against the Death Penalty on the Imposition of Two Death Sentences in Belarus

The International Commission against the Death Penalty (ICDP) condemns the imposition of the death sentence on Dmitry Kanavalaw and Uladzislaw Kavalyow on 30 November 2011. The two men were found guilty by the Supreme Court of Belarus for the bombing of the Minsk subway on 11 April 2011.

ICDP observes with concern the continuing use of the death penalty in Belarus. In July 2011, two prisoners were put to death without prior notification of their execution date.

ICDP opposes the death penalty under all circumstances, regardless of the gravity of the crime. The death penalty undermines human dignity and violates the right to life proclaimed by the Universal Declaration of Human Rights. ICDP also underlines that there exists no conclusive evidence on the deterrent effect of capital punishment.

ICDP urges the Belarusian authorities to commute the death sentences imposed on Dmitry Kanavalaw and Uladzislaw Kavalyow to prison terms and to introduce a moratorium on the use of the death penalty, with a view to its complete abolition.

Federico Mayor

President of the International Commission against the Death Penalty

Further information on UA: 348/11 Index: EUR 49/003/2012 Belarus Date: 19 March 2012

Amnesty International calls for URGENT ACTION
Two Men Executed In Belarus[99]

Dzmitry Kanavalau and Uladzslau Kavalyou have been executed in Belarus. The authorities should now release the bodies of the two men to their families for burial.

On 17 March, Lubou Kavalyou, the mother of **Uladzslau Kavalyou** received a letter by post from the Supreme Court dated 16 March notifying her that her son had been executed in accordance with the Supreme Court judgement of 30 November 2011. The execution of **Dzmitry Kanavalau** has also been confirmed by state-owned media. The execution of Uladzslau Kavalyou took place despite an official request from the UN Human Rights Committee not to execute him until his application to the Committee had been considered.

Uladzslau Kavalyou and Dzmitry Kanavalau were sentenced to death on 30 November following a trial that failed to meet international fair trial standards. The two men's sentences were passed by the Supreme Court of Belarus leaving no possibility of appeal to a higher court. On 14 March, President Lukashenka denied them clemency. Lubou Kavalyoua sent letters to Belarusian Members of Parliament calling on them to influence Alexander Lukashenka to establish a moratorium on the death penalty in Belarus. On 11 March, Lubou Kavalyoua saw her son for the last time when she visited him in remand prison on Valadarski Street, Minsk. Lubou Kavalyoua believes that such a hurried execution is revenge for her attempts to fight for her son.

The letter sent to Lubou Kavalyoua is unusual practice. In the past, official notification that an execution has been carried out has not been sent to the relatives until weeks or months after the execution. The body is not released to the family, and the place of burial is kept secret, causing further distress to relatives. In 2003 the UN Human Rights Committee ruled, in the cases of two other executed prisoners, Anton Bondarenko and Igor Lyashkevich, that the secrecy surrounding the death penalty in Belarus punished the families and amounted to inhuman treatment. Tatiana Kavalyoua, sister of Uladzslau Kavalyou, reported that near the apartment block where they live in Vitebsk, north-east Belarus, security forces attempted to prevent any demonstrations of grief, including laying of flowers and lighting candles. Nevertheless, around 30 people left candles in the entrance to the building.

Please write immediately in Belarusian, Russian or your own language:

[99] Available online at http://www.amnesty.org/en/library/asset/EUR49/003/2012/en/0efb999e-9323-4f08-b2ff-fe176dc409d3/eur490032012en.pdf

- Expressing regret at the execution of the two men and calling on President Lukashenka to establish an immediate moratorium on the use of the death penalty, in line with UN General Assembly resolution 63/168, adopted on 18 December 2008;
- Calling on the Belarusian authorities to release the bodies of Dzmitry Kanavalau and Uladzslau Kavalyou to their families for burial, in line with the UN Human Rights Committee's 2003 rulings in the cases of *Bondarenko v.Belarus* and *Lyashkevich v. Belarus.*

PLEASE SEND APPEALS BEFORE 30 APRIL 2012 TO:

President
Alyaksandr Lukashenka
Administratsia Prezidenta Respubliki Belarus
ul.Karla Marksa, 38
220016 Minsk, Belarus
Fax: +375 17 226 06 10/ +375 17 222 38 72
Email: contact@president.gov.by
Salutation: Dear President Lukashenka

Also send copies to diplomatic representatives accredited to your country.
Please check with your section office if sending appeals after the above date. This is the second update of UA 348/11. Further information:
http://www.amnesty.org/en/library/info/EUR49/002/2012/en

Geneva, 14 February 2012

Statement by the International Commission against the Death Penalty on Pablo Ibar, Florida, USA

Pablo Ibar has been on death row in Florida State Prison for almost 12 years. He was convicted of a triple murder in 1994 despite serious concerns about the quality of the evidence linking him to the crime and poor legal representation at his trial.

Pablo Ibar has both Spanish and US citizenship.

The International Commission against the Death Penalty (ICDP) opposes the imposition of the death penalty in all situations. ICDP believes that the death penalty violates the right to life proclaimed by the Universal Declaration of Human Rights and should not be applied in any circumstances. ICDP also recalls that there exists no evidence which confirms the deterrent effect of the death penalty.

There is a clear global trend away from capital punishment as evidenced by UN General Assembly resolutions calling for a moratorium on the use of the death penalty as a step towards abolition. More than two thirds of all states have now abolished the death penalty in law or practice. ICDP urges the state of Florida to introduce an immediate moratorium on executions pending a review of the use of the death penalty.

Federico Mayor

President of the International Commission against the Death Penalty

Geneva, 12 April 2012

Statement by the International Commission against the Death Penalty on vote to repeal death penalty in Connecticut

The International Commission against the Death Penalty (ICDP) warmly welcomes the move to abolish the death penalty in Connecticut.

Following votes by the Senate and House of Representatives to repeal the death penalty the Governor is expected to sign the bill into law. Connecticut will be the 17th state to abolish the death penalty. New York, New Jersey, New Mexico and Illinois all abolished the death penalty in the past five years. Other states are considering abolition.

The state of Oregon introduced a moratorium on executions in 2011. Later this year (6th November 2012) California will hold a public vote on whether to replace the death penalty with life imprisonment.

More than two-thirds of all countries have shunned the death penalty and the UN General Assembly has called on states retaining capital punishment to establish a moratorium on executions with a view to abolishing the death penalty.

The vast majority of executions take place in just five countries: China, Iran, Iraq, Saudi Arabia and the USA. But in the USA the number of executions and death sentences are steadily declining as courts resort to life imprisonment as an alternative to judicial killings.

ICDP considers that the death penalty undermines human dignity and violates the right to life proclaimed by the Universal Declaration of Human Rights and it should never be applied whatever the crime. Furthermore, there exists no conclusive evidence that the death penalty is a deterrent, and there is a real risk of executing innocent people.

Since the early 1970s more than 140 death row inmates have been exonerated - people sent to death row for a crime they did not commit.

ICDP urges Governor Dannel P. Malloy to sign the Bill into law without delay and urges other states to follow Connecticut's lead.

Federico Mayor
President of the International Commission against the Death Penalty

Geneva, 29 March 2012

Statement by the International Commission against the Death Penalty on Japan's first executions since July 2010

The International Commission against the Death Penalty (ICDP) strongly condemns the executions of 29 March 2012.

According to the Ministry of Justice three prisoners were executed today. Tomoyuki Furusawa, 46, Yasutoshi Matsuda, 44 and Yasuaki Uwabe, 48, were executed in three detention centres in Tokyo, Fukuoka and Hiroshima respectively. The hangings are the first to take place since July 2010.

Death penalty is a cruel, inhuman and degrading punishment. Executions in Japan are usually carried out in secret and prisoners are given little or no warning before they are executed. There are reportedly more than 130 prisoners on death row in Japan.

While Japan resumes judicial killings the rest of the world is turning its back on the death penalty.

In the Asia region, Mongolia recently ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. More than 140 out of the 193 member states of the United Nations have abolished the death penalty in law or practice.

Japan is at a crossroad. It can continue down the death penalty road among a minority of countries or begin a journey towards abolition - a direction of travel where state executions play no part in a modern justice system.

As a first step in this direction, ICDP urges Justice Minister Toshio Ogawa not to sign further execution warrants.

ICDP calls on Japan to introduce an immediate moratorium on executions in line with the United Nations General Assembly Resolutions adopted in 2007, 2008 and 2010; and initiate an independent and comprehensive study on the use of the death penalty.

Federico Mayor
President of the International Commission against the Death Penalty

The Death Penalty for Drug Offences - Global Review 2011
Shared Responsibility and Shared Consequences

Patrick Gallahue[100]

1. Introduction and Executive Summary

The *Global Overview 2011* is the fourth publication on the issue of the death penalty for drug offences that Harm Reduction International has produced since December 2007, and the second annual overview on the status of the practice worldwide. It provides a country-by-country analysis of the death penalty for drugs, and is intended to inform policy-makers of the potential for change as well as to shed some light on the environments in which the international fight against illicit drugs is pursued.

1.1. The death penalty for drugs worldwide

There are currently thirty-two countries or territories in the world that have laws prescribing the death penalty for drug offences, a practice that is in violation of international law.[101]

Drug offenders make up the majority of those who are condemned to die and/or are executed in many retentionist countries. Although comprehensive numbers are difficult to obtain, it is certain that hundreds of people are executed every year for a drug-related offence (and that number would likely reach a thousand if those countries that keep their death penalty figures a secret were counted). Despite these disturbing numbers, the vast majority of executions are in practice carried out by a very small number of states and, while there are still too many states executing people for drug offences, these countries represent an extreme fringe of the international community.

Although secrecy remains an obstacle, the Global Overview 2011 estimates that executions for drugs have taken place in just twelve to fourteen countries over the past five years. In the twelve months prior to this report's publication, it is probable that executions for drugs occurred in fewer

[100] Patrick Gallahue is a Human Right Analyst with Harm Reduction International. The full report may be accessed on http://www.ihra.net/files/2011/09/14/IHRA_DeathPenaltyReport_Sept2011_Web.pdf

[101] According to Amnesty International, fifty-eight states retain the death penalty [Amnesty International (29 March 2010) Death Sentences and Executions in 2010, ACT 50/001/2011, p. 3]. The thirty-two states that prescribe the death penalty for drugs can be somewhat misleading when compared with Amnesty's figure since five are classified as abolitionist de facto. Therefore, of Amnesty's fifty-eight states, only twenty-seven prescribe the death penalty for drugs. According to the UN Secretary-General's eighth quinquennial report on capital punishment, 'de facto abolition is the result of government policy and is effected, in a legal sense, through a refusal by the authorities to actually order an execution or by the mechanism of official commutation or pardon' [UN Economic and Social Council (18 December 2009) E/2010/10, p. 14].

than nine countries.[102] Furthermore, this report estimates that only 5 per cent of nations actually enforce mandatory death sentences for drugs in practice.

The international consensus against carrying out executions for drugs is becoming ever clearer. Many governments that have introduced capital drug laws do not carry out executions, even if some do occasionally pass death sentences. In fact, a handful of retentionist states have never applied the death penalty to a drug offender.

With so few states committed to the practice, capital drug laws would appear to be superfluous to most governments. However, like the death penalty generally, it is difficult to make sweeping assumptions about these sanctions because of their contextual significance and the swiftness with which laws and practices can change.

While predicting the future of such practices is impossible, it is clear that the past several years have seen the death penalty for drug offences in retreat. This is a welcome reversal to the rise in countries prescribing the death penalty for drugs that occurred over the 1980s and 1990s, even as the death penalty for all crimes was abolished at historically unprecedented rates.

Since 2000, more states have abolished the death penalty for all crimes, and others have revoked capital punishment as a possible sanction for drugs. Within those states that carry out executions in high numbers, there is an active debate on capital drug laws. Another promising recent development has been the accelerating number of challenges to the death penalty internationally, and in some cases to capital drug laws in particular. Such challenges are aided in no small part by the growing consensus that the death penalty for drugs is a violation of international human rights law. Evidence of this consensus is presented in greater detail in two other Harm Reduction International reports: *The Death Penalty for Drug Offences: A Violation of International Human Rights Law* and *The Death Penalty for Drug Offences: Global Overview 2010*. A brief overview of international law sources is included again in this report.

1.2. High application, low application and symbolic application states[103]

Despite the small number of states actually executing people for drug offences, drugs remain an

[102] Known executions have taken place in China, Iran and Saudi Arabia. It is probable that executions for drugs have taken place in Viet Nam, Malaysia and North Korea. It is unknown but possible that executions have occurred in Syria, Yemen and Iraq.

[103] These categories were inspired by David T. Johnson and Franklin E. Zimring's 2009 book, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia*. In this book the authors developed a means of establishing whether execution policies among retentionist nations in Asia are 'operational', 'exceptional', 'nominal' or 'symbolic'. In Harm Reduction International's previous report, *The Death Penalty for Drug Offences: Global Overview 2010*, the term 'commitment' was used to categorize countries in order to demonstrate the potential for abolitionist countries to push reform of capital drug laws. However, due to the risk that such a term could be confused with 'commitment' to criminal justice or rule of law, the term 'application' will be used in this and future reports.

important element in the capital punishment debate. In showing the variations in state practice, this report intends in part to demonstrate the potential for change.

Although the majority of states do not regularly execute drug offenders, there are still many people killed under these laws each year. The number of annual executions for drug offences is so high because a small handful of countries carry out the practice so aggressively. The vast majority of executions take place in just six states, which are classified in this report as 'high application' states. These jurisdictions have traditionally sentenced large numbers of people to death for drugs, and have carried out such sentences with regularity. The high application states are an extreme fringe in terms of both capital punishment and drug policy.

A second group of states actively apply the death penalty for drugs, but do so only as an exceptional or unusual measure. Drug offenders may be executed every three or four years, but as a trend the application tends to be low. Eight states belong to this 'low application' category.

Five countries that prescribe the death penalty for drug offences are classified as abolitionist de facto (or abolitionist in practice).[104] Other countries maintain the death penalty for drugs in law, but have either never carried out an execution for the crime or have gone many years without doing so, even though a few of these do pass death sentences. In these countries, the death penalty is symbolic of the nation's 'tough' stance against drugs and is applied accordingly. The Global Overview 2011 identifies fourteen states or areas as belonging to this 'symbolic application' category.

There is also a fourth group of just four countries where there is insufficient data to categorize them accurately.

1.3. Foreign nationals disproportionately sentenced and executed

Careful inspection of capital drug laws reveals deep disparities in how these laws are applied. Very often, non-nationals comprise a majority or even a totality of those sentenced to death and/ or executed by a state. In these circumstances, there are major concerns of discriminatory law enforcement practices and sentencing, as well as failures to honour due process norms and provide access to consular assistance. It is for these reasons that, where possible, the number of foreigners sentenced to death and/or executed has been highlighted in this report.

The cases of foreigners on death row tend to 'hit home' when a country finds one of its own citizens sentenced to die for carrying drugs abroad. Even the general public in retentionist countries responds angrily to sympathetic cases of its most vulnerable citizens facing capital

[104] Amnesty International (29 March 2010) *Death Sentences and Executions in 2009*, ACT 50/001/2010, p. 29. Amnesty International defines abolitionist in practice countries as those that 'have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions'.

punishment abroad after clearly having been exploited by drug trafficking organisations. These incidents highlight how the issue of the death penalty for drugs is a matter of shared concern for both abolitionist and retentionist countries that support international drug control efforts, as well as those that cooperate with countries that enforce the 'ultimate sanction' to combat drugs.

1.4. 'Hard' drugs and soft targets

While retentionist states sometimes justify their capital drug laws as a means of guarding the nation from the potential effects of so-called 'hard' drugs, a cursory audit of death sentences shows that marijuana traffickers make up a large number or even a majority of those sentenced to die in some countries. Moreover, many of those executed and sentenced to die are far from major players in the illicit drug trade.

It is all too often people who are poor, desperate and vulnerable, and who have been exploited by trafficking gangs, who are sentenced to death. This situation was recently acknowledged by a government official in Singapore, who claimed that the execution of such people is necessary to send a message to their employers.[105] Responding to a question about leniency for a young offender who had been sentenced to death for a crime he was accused of committing at just nineteen years of age, the Law Minister reportedly said, 'If [the Appellant] escapes the death penalty, drug barons will think the signal is that young and vulnerable traffickers will be spared and can be used as drug mules'.[106]

Capital punishment policies, as well as draconian drug laws, are built on pillars of simplified generalisations. They rely on characterisations of people as 'evil',[107] as well as the enforcement of judicially sanctioned death as the state's sovereign right to defend the citizenry from lethal threats. Increasingly, lawyers, policy-makers and scholars are highlighting these fallacies with an array of legal challenges, legislative reforms and insightful studies. It is hoped that this report will contribute to this discussion, and demonstrate the role of drug laws in the wider political debate on capital punishment. It is also hoped that this report will give pause to policy-makers and encourage them to reflect on how international drug control is pursued in certain legal and political environments.

---

[105] Yong Vui Kong v. Attorney-General, summary of the judgment of Chan Sek Keong CJ, 4 April 2011, Civil Appeal No. 144 of 2010. For further discussion of the case and the court's decision, see Y. McDermott (2010) Yong Vui Kong v. Public Prosecutor and the mandatory death penalty for drug offences in Singapore: a dead end for constitutional challenge?, 1 *International Journal on Human Rights and Drug Policy* 35.

[106] Ibid.

[107] For further discussion on this, see R. Lines (2010) Deliver us from evil? – The Single Convention on Narcotic Drugs, 50 years on, 1 *International Journal on Human Rights and Drug Policy* 3.

The Death Penalty for Drug Offences:
A Violation of International Human Rights Law
International Human Rights Law and the Interpretation of "Most Serious Crimes"

Rick Lines[108]

Under the ICCPR, the application of capital punishment, while not prohibited, is restricted in important ways. One key restriction is found in Article 6(2), which states that, 'In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes'.

The UN Commission on Human Rights[109] identified this limitation as one of the key safeguards 'guaranteeing the protection of the rights of those facing the death penalty',[110] and the UN Human Rights Committee has called upon states to 'abolish [capital punishment] for other than the "most serious crimes".[111] The definition of what does and does not constitute a 'most serious crime' is therefore central to a consideration of whether the execution of drug offenders is consistent with international human rights law under the ICCPR.

The concept of 'most serious crimes' was the subject of debate during the drafting of the ICCPR, with some countries arguing the need to identify specifically the offences falling within the scope of this term. The failure of the drafters to do so has left national governments with the discretion to decide for themselves what acts constitute 'most serious crimes' and, as a result, many retentionist countries prescribe capital punishment for a variety of 'ordinary crimes', including drug offences.[112]

Since the ICCPR entered into force in 1976, the interpretation of 'most serious crimes' has been refined and clarified by a number of UN human rights bodies in an effort to limit the number of offences for which a death sentence can be pronounced. As early as 1982, the UN Human Rights Committee – the expert body that monitors compliance with state obligations under the ICCPR and provides authoritative interpretations of its provisions – declared that 'the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure'.[113] Two years later, the Economic and Social Council of the UN adopted the
resolution Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which reaffirmed that 'capital punishment may be imposed only for the most serious crimes' and

[108] Rick Lines is the Executive Director of Harm Reduction International. The full report may be accessed on http://www.ihra.net/files/2010/07/01/DeathPenaltyReport2007.pdf
[109] The UN Commission on Human Rights was abolished in 2006 to be replaced by the UN Human Rights Council.
[110] UN Commission on Human Rights (23 January 2004) para. 28
[111] UN Human Rights Committee (30 April 1982) para. 6
[112] Schabas (2002) pp. 105, 108–109.
[113] UN Human Right Committee (30 April 1982), para. 7

further specified that the scope of capital offences 'should not go beyond intentional crimes with lethal or other extremely grave consequences'.[114] This resolution was later adopted by the UN General Assembly.[115]

Guidance on the scope of concepts such as 'most serious crimes' and 'intentional crimes with lethal or other extremely grave consequences' is also found in the quinquennial reports on capital punishment issued by the UN Secretary-General. The 1995 report recognised that 'the definition of the "most serious crimes" may vary in different social, cultural, religious and political contexts'.[116] However, the reports have criticised the term 'most serious crimes', describing it as 'vague and open to a wide range of interpretations' and observed that 'the amorphous phrase "extremely grave consequences" has left itself open to wide interpretation by a number of countries'.[117] As a result, the Secretary-General emphasized that 'the safeguard…is intended to imply that the offences should be life-threatening, in the sense that this is a very likely consequence of the action'.[118]

In reviewing the range of ordinary offences for which capital punishment is prescribed internationally – including drug crimes – the Secretary-General concluded that the fact that the death penalty is 'imposed for crimes when the intent to kill may not be proven or where the offence may not be life-threatening' suggests that retentionist states are using 'a wide interpretation of both the letter and the spirit of the safeguard'. The Secretary-General further identified the application of the death penalty to 'a wide range of offences, far beyond the crime of murder' as a 'problem'.[119] The finding that inflicting capital punishment for crimes beyond murder is a 'problem' suggests that a 'most serious crime' is restricted to homicide and excludes non-lethal or otherwise ordinary crimes.

The UN Human Rights Committee has indicated that the definition of 'most serious crimes' is limited to those directly resulting in death. The Committee's Concluding Observations, which periodically examine country compliance with the terms of the ICCPR, stated for Iran in 1993 that 'In light of the provision of article 6 of the Covenant…the Committee considers the imposition of that penalty for crimes of an economic nature…or for crimes that do not result in loss of life, as being contrary to the Covenant'.[120] Death penalty expert Professor William A. Schabas of the Irish Centre for Human Rights notes that the Committee's recent case law suggests that it interprets 'most serious crimes' to apply only to homicide.[121] Similarly, Professor Roger Hood concludes that a strong argument can be made that capital punishment should be

[114] UN Economic and Social Council (1984) para. 1
[115] UNGA Res 39/118 (14 December 1984)
[116] Report of the Secretary-General (1995)
[117] Report of the Secretary-General (2001) paras. 144, 88
[118] Report of the Secretary-General (1995) para. 54
[119] Ibid. paras. 56, 144
[120] UN Human Rights Committee (29 July 1993), para. 8
[121] Schabas (2002) p. 110

restricted solely to 'the most serious offences of (culpable) homicide'.[122]

Further guidance on this question is found in the reports of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, which have consistently emphasized that 'the death penalty must under all circumstances be regarded as an extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner possible'.[123] Commenting on the interpretation of 'most serious crimes', the 2002 report stated: "The Special Rapporteur is strongly of the opinion that these restrictions exclude the possibility of imposing death sentences for economic and other so-called victimless offences, actions relating to revealing moral values, or activities of a religious or political nature – including acts of treason, espionage or other vaguely defined acts usually described as "crimes against the State".[124]

Indeed, the Special Rapporteur has stated strongly that in cases where the 'international restrictions are not respected…the carrying out of a death sentence may constitute a form of summary or arbitrary execution'.[125] For all these reasons, 'The Special Rapporteur is deeply concerned that in a number of countries the death penalty is imposed for crimes which do not fall within the category of the "most serious crimes" as stipulated in article 6, paragraph 2, of the International Covenant on Civil and Political Rights'.[126]

The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment published a similar finding in a 2006 report on China, which expressed 'concern at the high number of crimes for which the death penalty can be applied' and recommended that the 'scope of the death penalty should be reduced, e.g. by abolishing it for economic and non-violent crimes'.[127]

In keeping with the interpretation that capital punishment should be used only in exceptional circumstances, the UN Commission on Human Rights consistently 'called upon all countries that still maintain the death penalty to progressively restrict the number of offences for which it could be imposed'.[128] In 2004, the Commission again passed a resolution calling upon retentionist states that have ratified the ICCPR 'not to impose the death penalty for any but the most serious crimes'.[129] The resolution further called upon countries 'To ensure that the notion of "most serious crimes" does not go beyond intentional crimes with lethal or extremely grave consequences and

[122] Hood (2002) p. 77
[123] UN Commission on Human Rights (22 December 2004) para. 55
[124] UN Commission on Human Rights (9 January 2002) para. 114
[125] UN Commission on Human Rights (22 December 2003) para. 48
[126] Ibid. para. 50
[127] UN Commission on Human Rights (10 March 2006) paras. 69, 82(r)
[128] UN Commission on Human Rights (23 January 2004) para. 16
[129] UN Commission on Human Rights (21 April 2004) para. 4(d)

that the death penalty is not imposed for non-violent acts'.[130] Again the Commission called for the progressive restriction of the number of offences to which the death penalty may be applied.[131]

In conclusion, therefore, from the perspective of UN human rights treaty bodies and special rapporteurs, several areas of consensus emerge in the interpretation of 'most serious crimes' as to the threshold necessary to satisfy the requirements of Article 6(2) of the ICCPR. These include:

1. 'Most serious crimes' should be interpreted in the most restrictive and exceptional manner possible.
2. The death penalty should only be considered in cases where the crime is intentional and results in lethal or extremely grave consequences.
3. Countries should repeal legislation prescribing capital punishment for economic, nonviolent or victimless offences.

[130] Ibid. para. 4(f)
[131] Ibid. para. 5(b)

The Death Penalty for Drug Offences:
A Violation of International Human Rights Law
Do drug offences meet the threshold of "most serious crimes"?

Rick Lines[132]

Drug crimes as 'most serious crimes' in international human rights law

Although none of the above-mentioned reports and resolutions provide a definitive statement on the meaning of 'most serious crimes', there are strong indications that UN human rights bodies do not consider drug crimes to be capital offences. Based upon the restrictive interpretation of 'most serious crimes' explored above, it is difficult to argue that drug offences satisfy the threshold of intent or lethal consequence necessary to justify the death penalty under Article 6(2) of the ICCPR.

For example, the UN Human Rights Committee, in its Concluding Observations on reviewing national compliance with obligations under the ICCPR, has consistently been critical of countries that apply the death penalty to a large number of offences, noting the incompatibility of many of those offences with Article 6 and calling for repeal in those cases. The Committee has addressed these criticisms to many states that apply capital punishment to drug offenders, including Egypt,[133] India,[134] Iran,[135] Jordan,[136] Libya,[137] Philippines,[138] Sudan,[139] Syria[140] and Viet Nam.[141]

In its Concluding Observations on Sri Lanka in 1995, the Committee specifically listed 'drug-related offences' among those that 'do not appear to be the most serious offences under article 6 of the Covenant'.[142] In 2000, in the Concluding Observations on Kuwait, it expressed 'serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security as well as drug-related crimes'.[143] In its 2005 Concluding Observations on Thailand, the Committee noted 'with concern that the death penalty is not restricted to the "most serious crimes" within the meaning of article

[132] Rick Lines is the Executive Director of Harm Reduction International. The full report may be accessed on http://www.ihra.net/files/2010/07/01/DeathPenaltyReport2007.pdf
[133] UN Human Rights Committee (28 November 2002) para. 12
[134] UN Human Rights Committee (30 July 1997) para. 20
[135] UN Human Rights Committee (29 July 1993) para. 8
[136] UN Human Rights Committee (27 July 1994) s. 4
[137] UN Human Rights Committee (6 November 1998) para. 8
[138] UN Human Rights Committee (1 December 2003) para. 10
[139] UN Human Rights Committee (5 November1997) para. 8
[140] UN Human Rights Committee (24 April 2001) para. 8
[141] UN Human Rights Committee (26 July 2002) para. 7
[142] UN Human Rights Committee (26 July 1995) s. 4
[143] UN Human Rights Committee (27 July 2000) para. 13

6, paragraph 2, and is applicable to drug trafficking'.[144] This is the most definitive statement to date that drug offences do not satisfy the threshold for capital punishment under the ICCPR.

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also strongly stated that drug offences do not meet the threshold of 'most serious crimes': "[T]he death penalty should be eliminated for crimes such as economic crimes and drug-related offences. In this regard, the Special Rapporteur wishes to express his concern that certain countries, namely China, the Islamic Republic of Iran, Malaysia, Singapore, Thailand and the United States of America, maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences."[145]

The conclusion that drug-related offences fall outside the scope of 'most serious crimes' was recently reaffirmed in the Special Rapporteur's 2006 Annual Report.[146]

Therefore, from the perspective of the UN human rights system, there is little to support the suggestion that drug offences meet the threshold of 'most serious crimes'. In fact, the weight of opinion would indicate that drug offences are not 'most serious crimes' as the term has been interpreted.

Drug crimes as capital crimes in domestic legislation

In addition to international human rights law, another method to assess whether drug crimes constitute 'most serious crimes' in the eyes of the international community is to examine domestic legislation of retentionist countries. Indeed, perhaps the strongest case against the suggestion of an international consensus in this regard is the disparity among the retentionist states themselves over the definition of capital drug offences. This disparity not only calls into question the definition of drug offences as 'most serious crimes', but also undermines one of the key utilitarian rationales (deterring drug trafficking) used by retentionist governments for prescribing capital punishment for drugs.

A review of domestic legislation reveals a remarkable lack of consistency in the application of capital punishment for drug crimes. In 1995, the UN Secretary-General's fifth quinquennial report on the death penalty noted that the threshold for a capital drug offence among retentionist countries ranged from the possession of 2g to the possession of 25kg of heroin.[147] Identifying a credible definition of 'most serious crimes' using such a range is a difficult, if not impossible, exercise.

[144] UN Human Rights Committee (8 July 2005) para. 14
[145] UN Commission on Human Rights (24 December 1996) para. 91
[146] UN Human Rights Council (29 January 2007) paras. 51–53
[147] Report of the Secretary-General (1995) para. 55

Even among those states with common borders that retain the death penalty for drug offences, the threshold of what constitutes a capital offence varies, in some cases drastically. As a result of this lack of consistency – and often wildly differing standards – a capital offence in one country may only be a minor offence across the border in its neighbour. Often the differences are exponential. In some cases, a sentence of death is possible – or even mandatory – for the possession of amounts of drugs so small they would not approach the threshold of a capital offence in an adjacent state. One illustration of this is found when comparing the neighbouring states of India, Pakistan, Sri Lanka and Bangladesh, a region described by both a Bangladeshi Minister of Home Affairs and an Indian representative to the UN as a transit route between the two major opium-producing areas of the 'Golden Triangle' and the 'Golden Crescent'.[148] Under Sri Lankan legislation, the death penalty may be applied for trafficking, importing/exporting or possession of only 2g of heroin.[149] Yet a conviction for that same quantity of heroin in Bangladesh, Pakistan or India – where the death penalty is prescribed for possession of 25g,[150] 100g[151] and 1kg[152] respectively – would not nearly approach the level of a capital offence. The same legislation reveals a similar disparity in the threshold for opium: Pakistan, the most restrictive of these jurisdictions in this regard, prescribes the death penalty for possession of over 200g, a quantity far smaller than in the legislation of Sri Lanka (500g), Bangladesh (2kg) or India (10kg).

Similar inconsistencies in the definition of capital drug offences are evident when comparing the neighbouring states of China, Laos and Viet Nam, countries that border, or are part of, the 'Golden Triangle'. In China, the death penalty may be applied for possession of 50g of heroin.[153] In Viet Nam, the quantity necessary to constitute a capital crime is double that amount (100g),[154] while the 500g threshold in Laos[155] is five times that of the Vietnamese legislation and ten times that under Chinese narcotics laws.

Just over 1,000km away across the South China Sea, the possession of a mere 15g of heroin will bring a mandatory death sentence in both Singapore[156] and Malaysia.[157] Interestingly, Singapore's narcotics legislation does not prohibit 'heroin' but specifies 'diamorphine' (the pharmaceutical name for prescription-grade heroin) instead. On this basis, the government of Singapore has claimed, in response to criticism, that its law only imposes the death penalty for persons convicted of possessing or trafficking more than 15g of pure heroin, which in its

[148] UN General Assembly (9 June 1998); UN General Assembly (13 November 1989) para. 34
[149] Poisons, Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984, s. 54(a)
[150] The Narcotics Control Act, 1990, s. 19
[151] Ordinance No. XLVII of 1995 an Ordinance, s. 9
[152] Narcotic Drugs and Psychotropic Substances (Amendment) Act 1988 (Act No. 2 of 1989) s. 9
[153] Decision on the Prohibition of Narcotic Drugs (adopted at the 17th meeting of the Standing
[154] Committee of the Seventh National People's Congress on 28 December 1990) s. 2
[155] Amnesty International (28 August 2003)
[156] Amnesty International (9 May 2001) p. 1
[157] Malaysian Dangerous Drugs Act 1952 s. 37(da)(i)

calculations is equivalent to 'a slab of approximately 750g of street heroin'.[158] If the intention of this statement is to imply that Singapore maintains a higher threshold for death penalty crimes than countries whose laws only proscribe heroin, this claim opens up further regional inconsistencies as, for example, it legislates a threshold fifty times greater than neighbouring Malaysia, whose legislation prohibits 15g of 'heroin' rather than of 'diamorphine'.

Opium laws in this region are equally inconsistent. While 1kg of opium can bring execution in China,[159] across the border in Laos the quantity is 5kg.[160] In Singapore, a quantity of 800g of opium is a capital offence,[161] whereas in neighbouring Malaysia it is 1kg.[162]

This comparison of retentionist countries with common borders not only illustrates the arbitrary nature of defining 'most serious crimes' in the context of drugs, but also undermines the utilitarian rationale that harsh penalties are necessary and justified for countries geographically located on major drug transshipment routes.[163] If this were indeed a legitimate factor in the decision of governments to apply the death penalty for drug offences, it would encourage neighbouring states to harmonise drug penalties so as to discourage the countries with the 'weaker' provisions being targeted by drug traffickers. The fact that the legislation in neighbouring states is at times exponentially different undermines the credibility of this justification.

This inconsistent approach to the definition of capital drug offences among retentionist countries is in itself perhaps the strongest illustration that the extension of the death penalty to narcotics is at best an arbitrary exercise. The lack of a coherent threshold for a capital drug offence – as well as the wide variety of offences for which the death penalty is prescribed – demonstrates that there is not even consensus among retentionist countries about which drug crimes constitute 'most serious crimes', except for the moral rationale that all drug crimes are necessarily 'most serious'. As a result, it cannot reasonably be claimed that drug offences are considered 'most serious crimes' by the international community as a whole.

[158] Government of Singapore (2004)
[159] Decision on the Prohibition of Narcotic Drugs (1990) s. 2
[160] Amnesty International (9 May 2001) p. 1
[161] Misuse of Drugs Act (Chapter 185) 1998 revised edition, Second Schedule Offences Punishable on Conviction
[162] Malaysian Dangerous Drugs Act 1952, s. 37(da)(v, vi, va)
[163] Government of Singapore (1997) para. 4; UN General Assembly (9 June 1998)