

DEATH PENALTY: FROM APPLICATION TO A UNIVERSAL MORATORIUM

PROCEEDINGS OF THE WEBINAR
HELD ON 5 NOVEMBER 2020

On 5 November 2020, ECPM (Together Against the Death Penalty) organised a webinar in preparation for the vote of the resolution for a universal moratorium on the use of the death penalty. This event was organised in partnership with the Ministry of Human Rights of the Democratic Republic of Congo and the International Commission against the Death Penalty (ICPD), and co-sponsored by the Permanent Missions of Belgium, France, Italy and Switzerland to the United Nations in New York and by the European Union Delegation to the United Nations.

Since 2007, the resolution has been voted every two years in mid-December by the United Nations General Assembly (UNGA). Through this text, always adopted by a large majority of States, the UN reaffirms that the application of the death penalty undermines the human dignity and “calls upon all States that still maintain the death penalty to establish a moratorium on executions”. Although not legally binding, this resolution is a valuable asset in achieving a world without the death penalty.

During the webinar, speakers shared their optimism about universal abolition while stressing the urgency of an international dialogue with a view to adopting a universal moratorium on executions as soon as possible. The meeting addressed more technical issues such as the amendment of the 2018 resolution on State sovereignty in criminal justice or the new features of the 2020 text which integrates a gender approach. The Minister for Human Rights of the Democratic Republic of Congo has pledged that the DRC will vote in favour of the resolution for the first time in 2020.

INTRODUCTION

Raphaël Chenuil-Hazan, Director of ECPM, presented the role of the association around the resolution for a universal moratorium. Every two years, ECPM organises a side-event in New York to support the resolution and to work on the text. He shared his optimism on the progress of the States in favour of the Resolution by recalling that in 2018, 121 countries had voted in favour, 35 against, 32 had abstained and 5 were absent. He therefore concluded by calling on all States to vote in line with the situation in their country. He stressed the importance of the vote, noting that the resolution is a trend-setter that lays a first stone on the road to abolition.

OPENING REMARKS

Philippe Kridelka, Ambassador and Permanent Representative of Belgium to the United Nations, showed that the promotion of abolition should be collective by looking back at the celebration of the World Day against the Death Penalty on 10 October and the various international instruments that allow its application to be limited. Using the example of Belgium, he stressed that abolition is a long process. While the last execution took place in 1963, the death penalty was only abolished in 1996 and its abolition was enshrined in the Constitution in 2005. Even

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when it is no longer practised, the death penalty remains a source of lively debate. Mr Philippe Kridelka therefore called for international mobilisation: ***“Abolition is a long process that requires public debate. [...] Last year, there were no executions in 90% of UN member countries. Let’s continue to work to reach 100%.”*** In conclusion, he invited the participants to take advantage of this meeting to share experiences and good practices to be implemented in order to achieve universal abolition of the death penalty.

Nicolas de Rivière, Ambassador and Permanent Representative of France to the United Nations, first welcomed the progress made in the abolitionist struggle in 2019. He recalled that the number of executions had reached its lowest level in 10 years and that many countries had maintained their moratorium and that others had signed or ratified OP2. In 10 years, almost 15 States had abolished the death penalty for all crimes. However, he called for not letting down the guard because, ***“Despite the recurring call for a universal moratorium on the application of the death penalty, 49 countries still apply it in 2020, which means that around 65% of the world’s population still lives under the yoke of ‘justice that kills’.”*** He said that this situation is all the more problematic as the death penalty is often accompanied by other human rights violations, especially in countries that practice it on a large scale and where fair trial standards are not always respected. Mr. Nicolas de Rivière concluded his speech by calling for continued dialogue and a renewed effort, in partnership with civil society, to surpass the 121 States that had supported the resolution by 2018. He said that the debate on the abolition of the death penalty is in no way incompatible with respect for the sovereignty of States.

Stefano Stefanile, Ambassador and Deputy Permanent Representative of Italy to the United Nations, underlined through the Italian experience that abolition is a relatively long process. He recalled that Italy was the first country in the world to abolish the death penalty in the 18th century in the Grand Duchy of Tuscany. He reaffirmed that the death penalty is an inhuman and degrading punishment that is not a deterrent. He then referred to the asymmetrical and unjust effects of this penalty, which affects the most vulnerable groups more than others. Mr Stefano Stefanile also informed about the important additions contained in the 2020 resolution such as the mention of the role of civil society, the integration of the gender approach and the recognition of categories more vulnerable to the death penalty. He concluded by recalling that universal abolition is a long road that is not an intergovernmental confrontation but a common march towards human rights. He therefore hopes for more positive votes, consistency with national situations and changes in the position of States against.

Silvio Gonzato, Ambassador and Deputy Head of the European Union (EU) Delegation to the United Nations, first recalled the EU’s position in favour of the resolution for a universal moratorium because the death penalty is an infringement of human rights. He welcomed the progress towards universal abolition: 80% of UN member states have not executed for 10 years or more and others such as Kazakhstan have recently ratified OP2. He also noted progress in Kenya, Zimbabwe and the Central African Republic. Mr. Silvio Gonzato went on to say that the resolution was not binding but had a strong symbolic weight. He insisted that it was not a question of immediately abolishing the death penalty but of establishing a moratorium on executions. However, a vote in favour affirms a political position and is a preliminary step towards abolition. As this is a sensitive issue, Mr Silvio Gonzato called for national and international discussions in order to exchange views serenely and frankly. In conclusion, he called on countries to support the resolution which carries a message of respect for human life. He specified that the new text contained inputs on the discriminatory dimension of the death penalty against women.

Barbara Schedler Fischer, Deputy Head of Switzerland’s Human Security Division, recalled that the abolition of the death penalty is a priority of Swiss foreign policy. On the basis of the statement by UN Secretary General Guterres, she stressed the importance of establishing an official moratorium with a view to the eventual abolition of the death penalty. In her view, maintaining dialogue is a priority because the subject is sensitive and the points of view are varied. She recalled that four out of five countries have abolished or do not implement the death penalty. Switzerland encourages as many states as possible to join the global abolitionist trend and to vote for the resolution.

PRESENTATIONS

7 ARGUMENTS FOR A MORATORIUM ON EXECUTIONS

Ivan Šimonović, ICDP Commissioner, Permanent Representative of Croatia to the United Nations and UN Assistant Secretary-General for Human Rights from 2010 to 2016, presented seven arguments that justify a halt to executions in order to call on states to support the resolution. (1) He recalled that the death penalty sometimes applied to persons wrongly accused. In the United States, where DNA research is most important, 4% of those sentenced to death are innocent. (2) The death penalty is also arbitrary and discriminatory against minorities, the poor and migrants. In the United States, a black person is 4 times more likely to be sentenced to death than a white person for the same crime. (3) He insisted that the death penalty was not compatible with the right to life and that the execution amounted to torture or inhuman and degrading treatment. ***“It is impossible to execute a human being without violating human rights, regardless of the method of execution.”*** Thus, the death penalty violates the human rights of the person sentenced to death. (4) He added that the death penalty does not provide justice for the families of the victims and (5) that it is not a deterrent. In conclusion, he mentioned (6) the negative impact of the death penalty on the mental health of the convicted person's family, judges and prison staff as well as on society as a whole, indicating (7) that there was a correlation between the application of the death penalty and authoritarianism.

THE 2018 AMENDMENT ON STATE SOVEREIGNTY IN CRIMINAL JUSTICE AND ITS COUNTER-PRODUCTIVE ASPECT

William Schabas, Professor of International Law at Middlesex University in the United Kingdom, recalled that the conclusion of the UN Secretary General's report confirmed the global trend towards the abolition of the death penalty. He welcomed the increasingly robust content of the resolution for a universal moratorium. He then referred to more technical aspects of the 2018 resolution, indicating that most of the text had been voted by consensus before the amendment on State sovereignty in criminal justice matters caused a stalemate in the Third Committee. The amendment sought to reaffirm ***“the sovereign right of all countries to develop their own legal systems, including the determination of appropriate penalties, in accordance with their obligations under international law”***. Using the example of the Philippines, which has twice threatened to reintroduce the death penalty, he regretted this addition, which he described as incomprehensible as it could be interpreted as an invitation to reintroduce the death penalty. He challenged the view that the issue of capital punishment is one of criminal law and not human rights, pointing out that all States provide information on the death penalty in their Universal Periodic Review reports to the Human Rights Council, something they would not do if they thought that it was not a human rights issue. In conclusion, he recalled that ***“the goal of universal abolition is the abolition of this barbaric and inhuman practice”*** and expressed his optimism for universal abolition by 2035 at the latest.

A NON-BINDING RESOLUTION THAT DEMONSTRATES A STRONG COMMITMENT

“There is no legal obstacle for Morocco to vote for the resolution on the universal moratorium next December”

Nadia Bernoussi, Professor of constitutional law and Morocco's representative on the United Nations Human Rights Advisory Committee, said the death penalty is akin to state homicide, which is all the more dangerous and unjust when applied to crimes of opinion, religion or sexual orientation. In her intervention, she insisted on the non-binding aspect of the resolution in order to remove the confusion for States. Although it reflected a provisional situation, she recalled that the resolution demonstrated a strong commitment and that a favourable vote was a starting point for abolition for many States. Ms. Nadia Bernoussi then referred to the situation

of Morocco which is typical of the states in the Maghreb region. Morocco has been a de facto abolitionist country since 1996 and despite Article 20 of the Constitution which recognises the right to life, the death penalty is still in the penal code. She recalled that in the 2004 transitional justice process, the judiciary had recognised the importance of the abolition of the death penalty and the ratification of OP2. She presented the Head of State's strategy of intensive use of pardons even for terrorist crimes. She concluded her intervention with optimism by stating that **"there [was] no legal obstacle for Morocco to vote for the resolution on the universal moratorium next December"** and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. She went on to say that Morocco had an incrementalist legal culture that aimed to move forward in stages to generate consensus.

A HISTORIC VOTE IN 2020 IN FAVOUR OF THE RESOLUTION FOR THE DRC

"I am convinced that this time we will be able to vote in favour of this resolution. My country deserves it."

André Lite Asebea, Minister for Human Rights of the Democratic Republic of Congo, closed the panel with **a strong commitment that his country will vote for the first time in favour of the resolution in December 2020**. He explained the situation of the DRC which is in a de facto moratorium but hesitates to go through with its commitment by voting in favour of the resolution. He recalled that there had been no executions since 2003 despite court sentences. He also wished to inform the participants that the issue of the abolition of the death penalty had been raised with the President and other officials. The Minister then deplored the penal and prison inadequacies of the Congolese system in responding to human rights violations against the population in the Béni region as well as in the rest of the country. He showed how lawyers rely on international law to protect human rights in the DRC. In 2003, faced with the mass rapes of many women and the inadequacy of the 2002 Penal Code to judge this crime, the judges relied on the Rome Statute's notion of a crime against humanity to condemn these mass rapes. He concluded by announcing that the DRC will vote in favour of the resolution in 2020. As a lawyer and a Christian, he condemns violations of the sanctity of life. He added that more than an emergency, **the abolition of the death penalty was a necessity** and that it was necessary to continue to raise awareness on the issue.

REMARKS AND Q&A

"Isn't a universal abolition in 2030 too optimistic?"

William Schabas drew on his professional experience to show how far abolitionist activists have come. When he was a member of the Commission on Human Rights in Geneva in the 1990s, South Africa had no intention of abolishing the death penalty in the face of high crime rates and favourable public opinion. Similarly, Russia stated that it would never abolish the death penalty. However, he pointed out that these countries were now abolitionist and that only about 30 states carried out executions. He therefore called on all to share his optimism for universal abolition within 10 or 15 years, or even 20 years at the latest.

"What is the position of the United States?"

Ivan Šimonović said that the United States was gradually moving away from the death penalty and that few states were contributing to executions. He recalled that the implementation of the death penalty was politicised: federal executions resumed under Trump's administration, while Biden said he would gradually move away from the death penalty if elected.

Raphaël Chenuil-Hazan added that in order to vote in line with their situation, the United States should abstain because some states are abolitionist and others retentionist.

On the absence of contradiction between the amendment and the resolution.

Ahlem Sara Charikhi of the Permanent Mission of Algeria in New York first returned to the situation in Algeria, which has been applying a de facto moratorium on executions since 1993 while the country was facing terrorism. She recalled that Algeria was the only North African country to have consistently voted in favour of the resolution since 2007. She then clarified the position of Algeria, which is simultaneously voting in favour of the resolution for a universal moratorium and in favour of the amendment reaffirming the sovereignty of States in criminal justice matters. In her view, they are not contradictory, stressing that from her country's perspective, it is a sovereign choice to apply a moratorium and to decide what is a fair criminal justice system.

Why is the resolution struggling to be accepted by Muslim countries when many are in a moratorium situation?

Nadia Bernoussi said that the vote was due more to the authoritarian nature of the regimes than to the Muslim religion. Some doctors of Muslim law have stated that there is no incompatibility between the death penalty and Islam. However, she recalled that in Islam, the death penalty only applies in highly defined cases and justice must be done unanimously. In her view, this usage comes close to the definition of the "most serious crimes" as defined by international law.

CLOSING REMARKS

Raphaël Chenuil-Hazan recalled that the vote in the 3rd Committee will take place in mid-November and the vote in the plenary session in mid-December. He stressed that the resolution is about executions and not about abolition per se to show that many states could support it. In conclusion, he thanked all the co-sponsors, ECPM partners, the International Commission against the Death Penalty, speakers, interpreters and participants.

SOME ECPM RESOURCES RELATED TO THE TOPICS ADDRESSED:

- Watch the replay:
<https://youtu.be/xNPHz1QyIJM>
- ECPM campaign for a universal moratorium:
<https://www.ecpm.org/en/campaigns-in-progress/moratorium-campaign/>
- Moratorium flyer 2018 – analysis of the vote:
<https://www.ecpm.org/wp-content/uploads/flyer-moratoire-GB-MD-1.pdf>
- Moratorium flyer 2020 – North Africa:
<https://www.ecpm.org/wp-content/uploads/flyer-moratoire-afrique-du-nord-GB-110520-MD-planche.pdf>
- Towards a silent death, conditions of detention of people sentenced to death - DRC:
<https://www.ecpm.org/wp-content/uploads/mission-enquete-RDC-GB-2019-300420-WEB.pdf>

