

Exploring the Death Penalty Issue through Reading United Nations Documents

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Introduction

In “An Integrated Approach to Dealing with Controversial Issues in the EFL Classroom”, which appears in the present issue of this journal, G. Buffett and I referred to a couple of United Nations documents en route to discussing the death penalty. Here I will look in more detail at the UN documents relevant to the topic of the death penalty.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was adopted and proclaimed by the United Nations General Assembly on December 10, 1948. It is the first human rights doctrine — or the principle document enshrining the rights of all men and women — created by the organized community of nations.

The UDHR, consisting of a preamble and 30 articles, makes no specific mention of the death penalty. However, abolitionists argue that the death penalty is a violation of two fundamental human rights, citing Articles 3 and 5 of the Declaration:

Article 3

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

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Although the UDHR is not legally binding on member states of the United Nations, it is considered to have great moral force and has inspired numerous legally binding international instruments in the field of human rights as well as influenced national legislation and the constitutions of many states. The UDHR has been supplemented with a large number of human rights covenants, conventions and treaties. And many countries have cited the Declaration or included its provisions in their basic laws or constitutions.

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the United Nations at its General Assembly on December 16, 1966 and came into force on March 23, 1976.

Article 6 of this covenant is about the death penalty and it contains the following 6 paragraphs.

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This pen-

alty can only be carried out pursuant to a final judgment rendered by a competent court.

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

ICCPR is a “covenant” and therefore it is an agreement whereby countries agree to bind themselves under international law to conform to its provisions.

Note that ICCPR did not set out to abolish the death penalty but it provided a legal framework for the regulation of the death penalty. As S. Dando points out in “De Facto Abolition in Early Japanese History” (1996), “In this International Covenant, the protection of the right to life is not an absolute one, but a protection only by law — though, of course, with many restrictions imposed upon the legislature. This may be easy to understand, because in order to be supported by as many countries as possible, it was considered wise that even a rather loose type of guarantee of the right to life was much better than nothing at all. In fact, many countries, including the United States and Japan, ratified

this International Covenant, sooner or later.” (From: <http://www.law.indiana.edu/ilj/v72/nol/dando.html>)

Japan and the United States, which are now the only industrialized nations (or the only members of the Group of Eight) that still carry out executions, ratified the ICCPR in 1979 and in 1992 respectively.

The Optional Protocol to the International Covenant on Civil and Political Rights

The Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR-OP1) was adopted by the General Assembly of the United Nations on December 16, 1966 and entered into force on March 23, 1976.

The International Covenant on Civil and Political Rights includes two optional protocols and this first Optional Protocol to the Covenant allows individual citizens to lodge a complaint directly with the relevant UN Committee. Articles 1 and 2 provide:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

“The Covenant” and “the Committee” refer to “the International Covenant on Civil and Political Rights” and “the Human Rights Committee (set up in part IV of the Covenant)” respectively. “Optional protocol” is an international agreement complementing or supplementing a convention or covenant by adding new elements or requirements. The term “optional” emphasizes that the States which ratified the original convention are not under any formal obligation to agree to the protocol as well, though they are encouraged to do so. (Japan has not ratified it yet.)

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at 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 (ICCPR-OP2-DP) was adopted by the General Assembly on December 15, 1989 and entered into force on July 11, 1991.

As the title shows, the objective of ICCPR-OP2-DP is the abolition of the death penalty. Article 1 provides:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol

shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Under Article 6, Paragraph 2 of the International Covenant on Civil and Political Rights (ICCPR), States Parties are not obliged to abolish the death penalty but to restrict its use to the “most serious crimes” (see above). The Second Optional Protocol goes far beyond Article 6 of the ICCPR. Article 2 provides:

Article 2

1. No reservation is admissible to the present Protocol, except for 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.
3. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.
4. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Recent UN Commission on Human Rights Resolutions

Every year since April 1997 the United Nations Commission on Human Rights (UNCHR), the major UN body working to promote and protect human rights, has adopted a resolution on the death penalty calling on retentionist States to establish a moratorium on executions with a view to abolition.

Resolution 1997/12 of 3 April 1997

This resolution was cosponsored by Italy and 44 other countries, and was adopted by a vote of 27 in favor and 11 against, with 14 abstentions. In the resolution, UNCHR called on countries which retain capital punishment “to consider suspending executions, with a view to completely abolishing the death penalty”. The resolution also called on all states that had not yet abolished the death penalty “progressively to restrict the number of offences for which the death penalty may be imposed”.

Resolution 1998/8 of 3 April 1998

The resolution, urging member states to place a general moratorium on executions in their countries and move towards a world-wide abolition of the death penalty, was presented by Italy and cosponsored by 63 countries, 18 more than the 1997 resolution. The voting of the 53 member states of UNCHR was 26 in favor, 13 against, and 12 abstentions.

Resolution 1999/61 of 28 April 1999

The resolution was presented by Germany on behalf of the European Union. It gained 72 sponsorships (7 more than in 1998) and was adopted by a large majority: 30 votes in favor (4 more than in 1998), 11 against and 12 abstentions. UNCHR urged all States that still maintained the death penalty not to impose it for any but the most serious crimes and progressively to restrict the number of offences for which the death penalty may be imposed. The Commis-

sion also reaffirmed the international obligation of all states not to impose the death penalty for crimes committed by persons below 18 years of age; to exclude pregnant women from capital punishment; and not to impose the death penalty on a person suffering from any form of mental disorder.

Resolution 2000/65 of 26 April 2000

The resolution was adopted after a roll-call vote of 27 in favor to 13 against and 12 abstentions. UNCHR reiterated its call on all States to consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights and to make available to the public information with regard to the imposition of the death penalty.

Resolution 2001/68 of 25 April 2001

The resolution, which was almost identical in intention to that of resolution 2000/65, was presented by the European Union, and received 27 votes in favor and 18 against (7 abstentions).

Resolution 2002/77 of 25 April 2002

UNCHR put forth a motion to abolish the death penalty for the sixth consecutive year, and the resolution, which was submitted by the European Union, was adopted by a vote of 25 in favor and 20 against, with 8 abstentions.

Japan sided with countries including Algeria, China, Nigeria, Pakistan and Saudi Arabia in voting no. (The United States, who had voted against resolutions condemning capital punishment at UNCHR's previous meetings, only had

observer status in the UN body in 2002.)

The United Nations uses resolutions to express its opinion on issues, to make recommendations on how to address situations, and to apply political pressure on member-states to comply with obligations or expectations agreed upon by the international community. (From: <http://www.stthomasu.ca/new/jphmun/english/resolutions.htm>)

A resolution contains three sections: a title, preambular clauses, and operative clauses. While recommendations for specific actions, opinions regarding an existing situation and requests of considerations are presented in the operative clauses, it is the preambular clauses that discuss history, rationalizations and intentions to give a foundation to and justify the actions proposed in the operative clause section. In other words, the preamble provides the historical background for the issue and the framework through which the problem is viewed.

I will conclude this paper by quoting the preamble clauses from “The question of the death penalty, Commission on Human Rights resolution 2002/77.” (The format for this preamble was the same style as the original text.)

Recalling article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37 (a) of the Convention on the Rights of the Child,

Recalling also General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 on capital punishment, as well as resolution 44/128 of 15 December 1989, in which the Assembly adopted and

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

Recalling further Economic and Social Council resolutions 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996,

Recalling its resolutions 1997/12 of 3 April 1997, 1998/8 of 3 April 1998, 1999/61 of 28 April 1999, 2000/65 of 26 April 2000 and 2001/68 of 25 April 2001, in which it expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

Noting that, in some countries, the death penalty is often imposed after trials which do not conform to international standards of fairness and that persons belonging to national or ethnic, religious and linguistic minorities appear to be disproportionately subject to the death penalty,

Welcoming the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia, the International Tribunal for Rwanda and the International Criminal Court are authorized to impose,

Welcoming also the abolition of the death penalty which has taken place in some States since the last session of the Commission, and in particular in those States that have abolished the death penalty for all crimes,

Commending the States that have recently ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights,

Welcoming the recent signature of the Second Optional Protocol by some States,

Welcoming also the fact that many countries, while still keeping the death penalty in their penal legislation, are applying a moratorium on executions,

Referring to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2001/9 and Corr.1) with respect to the safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50,

Deeply concerned that several countries impose the death penalty in disregard of the limitations set out in the Covenant and the Convention on the Rights of the Child,

Concerned that several countries, in imposing the death penalty, do not take into account the Safeguards guaranteeing protection of the rights of those facing the death penalty,

(From: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/e93443efabf7a6c4c1256bab00500ef6?OpenDocument>)

This preamble—with references to the past UN resolutions and precedents of international law relative to the death penalty, factual situations, recent inci-

dents and developments, recent previous resolutions, treaties and declarations and principles—helps us understand what the international standards relating to the death penalty are like.

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