

ABOLITION OF THE DEATH PENALTY AS A PEREMPTORY NORM OF GENERAL INTERNATIONAL LAW (JUS COGENS)

Declaration of Paris on the Occasion of the International
Association of Penal Law Centenary Congress



Francisco de Goya "Muchos an acabado asi"



Association Internationale de Droit Pénal
International Association of Penal Law
Asociación Internacional de Derecho Penal

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1 Meeting in Paris on the occasion of the centenary of the International Law Association, the international academic network against the death penalty presents for discussion and signature a declaration in favour of the prohibition of the death penalty as a peremptory norm of international law (*ius cogens*), a text that has been in the making since the Madrid and Berlin Congresses of 2022. It has been 16 years since the 2007 UN General Assembly resolution on the moratorium, which reached 125 votes at its last review. Abolitionist countries number 144 and retentionist countries 55. The vast majority of executions take place in only 5 countries.

2 Following this pattern of change we have reached a significant milestone in the history of the death penalty. The temporary exception to Article 6(2) of the ICCPR, which allows the penalty to be applied for the “most serious crimes”, is now forcefully highlighted by Article 6(6), which states that “nothing in this article may be invoked to delay or prevent the abolition of capital punishment”. This is a temporary feature which allows us to question the claims of recent retentionist Member States that they can justifiably continue to use the death penalty in perpetuity.



May 2022 Madrid. Participants at the Conference on “*ius cogens* and the death penalty”. Photo Sofia Moro

3 More than two thirds of states now affirm this abolitionist position. We are at a new moment in promoting global synergy for abolition. All countries should join the abolitionist community, in the sense of General Comment No. 36 on the right to life which “reaffirms the position that States Parties that are not yet fully abolitionist must follow an inexorable path towards the complete eradication of the death penalty, *de facto and de jure*, in the near future. The death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is both desirable [...] and necessary for the enhancement of human dignity and the progressive development of human rights”.

4 As humanity evolves, reflection becomes clearer on the bloody history of sovereign power’s relationship to capital punishment, we must use our best interpretive tools of the ICCPR to highlight what is legitimate in a government’s application of punishment.

5 The United Nations has provided a multi-polar test for reaching this assessment. The UN has led the way with the creation of mechanisms to achieve global abolition, in particular:

- The international legal mechanism for abolition is articulated in the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims to abolish the death penalty.
- Article 6(2) which is often misunderstood; it is not a licence to kill, but rather a necessary imposition of restrictions on the use of capital punishment by states that still cling to this barbaric practice”, the ECOSOC Safeguards (and their amendments) which identify minimum standards in capital punishment prosecutions must be respected and interpreted to encourage governments to abolish the death penalty domestically.
- The Secretary-General’s quinquennial report on the death penalty assesses States’ compliance with the Safeguards and identifies practices incompatible with the standards of the Covenant.
- The Human Rights Council’s High Level Panel discussions on the question of the death penalty open dialogues and bridges of communication on issues inherent in this form of punishment and explore global trends leading to abolition.
- UN Special Procedures regularly use their mandates to denounce the death penalty around the world. Reports have pointed to global norms towards abolition and specific communications in capital cases that identify treaty violations.
- The institutionalised monitoring process carried out by the committees created by the human rights treaties where retentionist countries are asked to adhere to these standards, highlight issues such as the unfairness and discrimination of capital trials, inhumane conditions on death row and cruelty and torture in the process of executions.
- The Universal Periodic Review has witnessed an increase in recommendations towards retentionist States under review. After three completed UPR cycles, there is already a body of recommendations for the initiation of moratoria, de jure abolition and ratification of the Second Optional Protocol. Both states and civil society organisations use this peer review mechanism to highlight the inhumanity of the death penalty.
- The abolition of the death penalty is seen as a mirror of the Sustainable Development Goals. SDG 16 states “Strong institutions and access to justice and building effective institutions”, but the application of the death penalty is incompatible with this goal. Specifically, SDG 16.1 aims to reduce mortality rates, promote equal access to justice and protect fundamental freedoms. The use of the death penalty is not a sign of legitimate strength in institutions, but has counterproductive and inhumane consequences, including a brutalising effect on society.



Francisco de Goya “Castigo frances”

- 6 This sophisticated UN framework that purports to remedy the death penalty issue demonstrates that the punishment must now be seen as a violation of the inalienable dignity and rights of the human being.
- 7 A death penalty prosecution cannot be considered to consistently respect the legal protections necessary to satisfy a fair trial under Article 14 of the ICCPR.
- 8 The death penalty is not a justifiable form of retribution in either a governmental or societal capacity, and has never been shown to have any particular deterrent effect in preventing or reducing crime greater than imprisonment.
- 9 In the present time we have extensive empirical knowledge about modes of execution and we know that they generally result in a cruel and inhumane form of killing. This has been seen from the phenomenon of death row to the evident failure of procedures once presented as the most humane, which have also systematically incurred the inhumane production of pain and suffering, as well as in the form of “botched executions” with Dantesque scenes that increase cruelty, pain and suffering”.
- 10 The methods of execution are cruel and cannot insulate the condemned person from the psychological and physiological impact of the death penalty. It is inherently a cruel and inhumane invasion of the condemned person, and when it occurs it results in negative consequences on families and the community.
- 11 As we seek to create humane ways to protect society and appropriately punish violations of the criminal law, we stand at a historic moment. As a global community promoting human rights principles, we are in a position of normative legitimacy to maintain that the death penalty is a *per se* violation of human rights. There is cumulative evidence to suggest that abolition of the death penalty is now a new global norm, a peremptory norm of general international law (*ius cogens*).
- 12 Abolition would therefore enable people in retentionist jurisdictions to benefit from this breakthrough in understanding what is happening around capital punishment. Leading research on the death penalty demonstrates that:
 - (a) It is not a justifiable function for a legitimate government;
 - (b) It violates human rights; and therefore,
 - (c) It contravenes the peremptory norms of general international law (*ius cogens*)
- 13 For all the above reasons, we, the undersigned, understand that the proscription of the death penalty from punitive systems is a requirement based on the right to life and the right not to subject human beings to torture or inhuman treatment, and that we consider it an integral part of jus cogens and, in any case, a peremptory norm of general international law.
- 14 We therefore call for the global abolition of the death penalty, which has no place in our world today.

FIRST SIGNATORIES TO THE PROPOSAL IN 2023:

William Schabas, *London, UK* - Robert Badinter, *París FR* - Jon Yorke, *Birmingham, UK* - John Vervaele AIDP, *Utrecht, NL* - Luis Arroyo Zapatero SIDS, *Ciudad Real, ES* - José Luis de la Cuesta, *San Sebastián, ES* - Sergio García Ramírez, *México, MX* - Juan E. Méndez, *Washington, USA* - Federico Mayor Zaragoza, *Madrid, ES* - José Luis Rodríguez Zapatero, *Madrid, ES* - Geneviève Giudicielli Delage, *París, FR* - Carolyn Hoyle, *Oxford, UK* - Ulrich Sieber, *Freiburg in Breisgau, DE* - George Werle, *Berlin, DE* - Anna Getos, *Zagreb, HR* - Raul Zaffaroni, *Buenos Aires, AR* - Salomao Shecaira, *São Paulo, BR* - Sylvia Steiner, *São Paulo, BR* - Roberto M. Carlés, *Bs As, AR* - Sandra Babcock, *Ithaca, USA* - Alicia Gil, *Madrid, ES* - Ana Manero, *Madrid, ES* - John Bessler, *Baltimore, USA* - Francisco Muñoz Conde, *Sevilla, ES* - Fernando Velasquez, *Bogotá, CO* - Antonio Muñoz, *Jaen, ES* - Anabela Miranda Rodrigues, *Coimbra, PO* - Adán Nieto, *Ciudad Real, ES* - Luigi Foffani, *Módena, IT* - Juliette Tricot, *París, FR* - Oganit Younam, *Beirut, LB*.

