

JEIMUN 2025



January 11th - 13th, 2025

BACKGROUND GUIDE

Agenda Item:

**MORATORIUM ON THE
EXECUTION OF THE
DEATH PENALTY**

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Chapter 1: Introduction to the Conference

This chapter provides a summary of the setting of this conference, the seat of the conference, the Third Committee of the UN General Assembly, and the significance of the outcome document to be adopted there, the UN General Assembly resolution.

1.1. Committee Setting

Committee: United Nations General Assembly 75th Session
Social, Humanitarian and Cultural Committee
(3rd Committee)

Agenda Item: Moratorium on the Execution of the Death Penalty

Dates: January 11,12, and 13, 2025

1.2. Committee Description

[General Assembly]

The UN General Assembly is the main policy-making organ of the Organization. Comprising all Member States, it provides a unique forum for multilateral discussions of the full spectrum of international issues covered by the Charter of the United Nations. Each of the 193 Member States of the United Nations has an equal vote.

Delegates from national governments participate in the UN General Assembly. They represent their states during the meetings and are authorized to draft resolutions and vote on them. They are also expected to express their views on the floor and to act for their states at the conference.

[3rd Committee]

The UN General Assembly deals with a wide range of issues, including military, economic, environmental, humanitarian, cultural or legal issues. It has six standing committees, with many issues being discussed in individual committees.

The Third Committee is assigned agendas related to social, human rights, cultural, and other issues. Discussions on moratorium on the execution of the death penalty began in 2007 and generally take place every two years. As explained in this background guide, this agenda also discusses not only about moratorium but also prohibition of the death penalty and restrictions on execution. The discussion at this conference will also include these issues.

1.3. Resolution

Resolutions adopted by the General Assembly are statements indicating their intention to the international community. However, they are not directly legally binding like treaties, and it is up to states to obey the resolution. For the resolution to be meaningful in the absence of legally binding, it is desirable to be adopted by consensus.

Chapter 2: Topic Briefing

This chapter introduces fundamental and preliminary knowledge to discuss this topic. It is desired to understand and acquire these when attending this conference.

This background guide is based on the background guide of the 13th All-Japan High School Model United Nations Conference held in 2019. Therefore, some information may be outdated. Each participant should do their research carefully.

2.1.0. The Past and the Present of Moratorium on the Execution of the Death Penalty

This section introduces the documents and their contents, which are important for discussing moratorium, and describes the development of the debate in the international community.

2.1.1. Changes and Developments of the Discussion on the Death Penalty in the United Nations- Focus on the Right to Life and the Death Penalty

[Universal Declaration of Human Rights]

The Universal Declaration of Human Rights (UDHR) is a milestone document in human rights history. Drafted by delegates from different legal and cultural backgrounds from all regions of the world, the Declaration was introduced to the UN General Assembly in Paris on December 10th, 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. The UDHR is widely recognized as having inspired and supported the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels (all containing references to it in their preambles).

The most important part is Article 3, which states, “Everyone has the right to life, liberty, and security of person.” It clearly states and establishes the right to life for the first time in the international community.

[International Covenant on Civil and Political Rights]

The International Covenant on Civil and Political Rights (ICCPR) was adopted and opened for signature, ratification, and accession by the UN General Assembly resolution 2200A (XXI) of 16 December 1966. It took another 10 years before the necessary 35 States had become sponsors and it formally entered into force for those States on 23 March 1976, in accordance with Article 49.

This covenant and the International Covenant on Economic, Social and Cultural Rights (ICESCR) build on the rights in UDHR. UDHR and these two Covenants form the International Bill of Human Rights, together.

The right to life on this ICCPR is stated as “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.” in article 6(1). It emphasizes that it is an inherent right.

When focusing more closely on the relationship between the right to life and the death penalty, Several states, mainly Uruguay and Colombia, called for the prohibition of the death penalty because it violated the right to life due to the possibility of punishing innocent people through mistrials, the absence of deterrence and the fact that it is against to rehabilitation which is grounds for justifying the punishment. However, the majority of states, including Western nations, opposed the prohibition because it would place a heavy burden on states and would be inappropriate in the current situation. Therefore, the prohibition of the death penalty was not clearly stated at ICCPR. The right to life, which was declared an inherent right, did not become an absolute right that should be protected without any exceptions in any case, such as the prohibition of torture, and the death penalty was recognized as an exception to the right to life. However, ICCPR Article 6, Paragraph 6 states that “Nothing in this article shall be invoked by States Parties to delay or prevent the abolition of capital punishment¹” . It is also stipulated that the provision allowing the death penalty with restrictions (Article 6, Paragraph 2) does not apply to nations that have already prohibited the death penalty. Regarding these two points, General Comment No. 6 of the Human Rights Committee evaluates the wording as “strongly suggesting the desirability of abolition (of the death penalty).”

Moreover, although the death penalty itself was not abolished, the necessity of restricting the death penalty, which is inherently an undesirable punishment, was advocated, and the following points were incorporated as restrictions on the death penalty system:

□ **Protection against arbitrary deprivation of life (Article 1)**

While the ICCPR establishes the prohibition of arbitrary executions as a restriction on the death penalty, the scope of “arbitrary” was unclear. The specifics of arbitrary executions are detailed in the minimum standards of The United Nations Economic and Social Council² (ECOSOC)(discussed in Chapter 3). It should be understood here that “unlawful” and “arbitrary” are considered distinct³. The Human Rights Committee has expressed the view that “rights should be protected by law, and the prohibition against arbitrary deprivation of life means that the law must strictly regulate and limit the circumstances under which the state may deprive someone of life.” Therefore, based on this view, the term “arbitrary” in Paragraph 1 does not simply mean “unlawful⁴”; it also includes situations where the law itself is arbitrary.

□ **The death penalty can only be imposed for the most serious crimes (Article 2)**

¹ The text within parentheses was added by the author.

² One of the main UN bodies. It deals with economic issues such as trade and social issues such as human rights.

³ Some oppose this view, arguing that as long as a law is followed, it cannot be considered arbitrary.

⁴ U.N. Doc. CCPR/C/15/D/45/1979 (translated by the author).

While the definition of “most serious crimes” is not explicitly stated in the text of the ICCPR, the Human Rights Committee interprets it as referring to “intentional killing”⁵, stating that “imposing the death penalty for economic crimes, corruption, adultery, or crimes that do not result in the loss of life is inconsistent with the Covenant.”⁶ Furthermore, a resolution by ECOSOC, mentioned later, defines “intentional crimes resulting in death or with other extremely grave consequences.”⁷

☐ **Non-retroactivity of the law (Article 2)**

This means that laws that were not in effect at the time of the crime cannot be applied retroactively.

☐ **Obligation to comply with the Convention on the Prevention and Punishment of the Crime of Genocide (Article 3)**

☐ **The right to seek pardon or commutation and the possibility of receiving it (Article 4)**

☐ **Restrictions on the death penalty for persons under 18 and pregnant women (Article 5)**

When considering these provisions, it is important to note that the ICCPR is not just a declaration like the UDHR but takes the form of a treaty, which means it has legal binding force in the ratifying countries (which are obligated to adhere to its content). However, it is also important to understand that the legal binding force generally applies only to countries that have agreed to be bound by the treaty, and it does not have legal effects on countries that are not signatories. Additionally, the treaty system allows for “reservations,” meaning that a country can become a signatory by expressing its intention to not be bound by certain parts of the treaty if it disagrees with them. The possibility of reservations varies depending on the treaty, and while some treaties explicitly limit reservations, even when not explicitly stated, it is generally understood that reservations that undermine the treaty’s purpose are not allowed. Regarding reservations to the ICCPR, the Human Rights Committee, in General Comment No. 24, stated that some of the reservations made by countries are invalid, and this judgment, which invalidated a significant number of reservations, has faced much criticism.

[International Covenant on Civil and Political Rights - Second Optional Protocol aiming at the abolition of the death penalty^{8,9}]

⁵ U.N. Doc. A/67/275 Article 66 and more

⁶ U.N. Doc. CCPR/C/79Add.25 para.8

⁷ E/RES/1984/50 ANNEX para.1

⁸ “The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,” “Second Optional Protocol,” and “Second Optional Protocol concerning the death penalty” all refer to this document.

⁹ An optional protocol is a document created to supplement a treaty, and the state parties to the treaty can separately choose whether to ratify each optional protocol. The ICCPR has two optional protocols: the First Optional Protocol, which establishes the individual complaint mechanism (see Section 6.2), and the Second Optional Protocol, which stipulates the abolition of the death penalty.

The Second Optional Protocol to the ICCPR, issued in 1991, was the first treaty to prohibit the death penalty. By this time, the number of countries abolishing the death penalty had significantly increased, particularly in Europe. In light of this domestic trend towards abolition and leadership by West Germany, the proposal to draft the Second Optional Protocol to the ICCPR, which would focus on the abolition of the death penalty, was made in 1980. After being drafted by the Human Rights Sub-Commission, it was finally adopted at the 1989 United Nations General Assembly with 59 votes in favor, 48 abstentions, and 26 votes against.

The main content of the death penalty abolition treaty are as follows:

- The abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights (Preamble)
- The abolition of the death penalty is a step forward in the enjoyment of the right to life (Preamble)
- No person within the jurisdiction of a State Party shall be executed (Article 1(1))
- State Parties shall take all necessary measures to abolish the death penalty (Article 1(2))
- Reservations to the treaty are limited to “the most serious crimes of a military nature committed during wartime” and must be made at the time of ratification or accession (Article 2)

What is important about the death penalty abolition treaty is that it was the first treaty established by the United Nations to **prohibit the execution of the death penalty and to make its abolition a mandatory obligation**. However there were regional treaties abolishing the death penalty before, this was the first global effort to do so. As of now, 87 countries are signatories to the death penalty abolition treaty.

2.1.2. Formulation of the Minimum Standards by the Economic and Social Council

As previously mentioned, restrictions on the death penalty were introduced to promote human dignity and the right to life. Here, we will highlight one important document related to understanding these restrictions on the death penalty.

The Economic and Social Council (ECOSOC) has been the main body conducting investigations and discussions on the restriction of the death penalty, particularly through the Human Rights Committee¹⁰, ever since it was commissioned by the United Nations General Assembly in 1959. ECOSOC has long engaged in extensive discussions on the death penalty under the agenda item¹¹ “Question of the Death Penalty,” and has established “international standards that set protective measures to ensure the rights of those sentenced to death.” Among these, a particularly

¹⁰ The Human Rights Commission was a subsidiary body of ECOSOC, issuing numerous resolutions on human rights, including those concerning children's and women's rights. It was a central entity for human rights activities within the United Nations until it was replaced by the Human Rights Council in 2006.

¹¹ Since the establishment of the Human Rights Council, replacing the Human Rights Commission, the "Question of the death penalty" has been addressed by the Human Rights Council.

significant document when considering restrictions on the death penalty is the “minimum standards” set out in the annex to the 1984 resolution adopted by ECOSOC¹².

These minimum standards were established to provide specific guidelines that retentionist countries must adhere to when carrying out the death penalty. The standards outlined here serve as indicators of what constitutes “arbitrary executions,” which are prohibited under the ICCPR. The full text of these minimum standards is quoted below.

ANNEX

Safeguards guaranteeing protection of the rights of those facing the death penalty

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall be mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

¹² ECOSOC, Resolution 1984/50 ANNEX

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

The minimum standards, after being adopted by ECOSOC, have been repeatedly referenced in resolutions, reports, and other documents by the UN General Assembly and the Human Rights Council up to the present day. They are also cited in Resolutions on a Moratorium on the execution of the death penalty, so please refer to them as needed.

2.1.3. Discussion on the Death Penalty in the General Assembly

The death penalty has been a topic of discussion at the United Nations General Assembly for a long time, with the focus gradually shifting over time. Initially, under the title “Capital Punishment,” discussions centered on whether to retain, abolish, or restrict the death penalty. However, as the goal of abolishing the death penalty gained momentum, the idea of temporarily suspending the death penalty (death penalty moratorium) began to be discussed. The concept is that, in countries where immediate abolition is difficult, the act of temporarily halting executions while waiting for sufficient discussion and the formation of public opinion contributes to the enhancement and development of human dignity and human rights. Since 2007, when the UN General Assembly formally began addressing the issue under the title “Moratorium on the execution of the death penalty”, discussions on this topic have generally taken place every two years in the Third Committee of the General Assembly.

However, the content of the resolutions is not limited to the death penalty moratorium alone; they also include expressions of concern about the retention of the death penalty, demands for compliance with international frameworks that stipulate protective measures ensuring the rights of those sentenced to death, and broader discussions on the direction towards the abolition of the death penalty or its restriction. The content of the resolutions has not varied significantly from year to year, and generally includes the following points¹³:

Preamble:

- The death penalty undermines human dignity.
- The suspension of executions contributes to the progressive development of human rights.
- Wrongful convictions are irreversible.
- The deterrent effect of the death penalty cannot be expected.
- Welcomes the accession to or ratification of the treaty aiming at the abolition of the death penalty.

¹³ U.N. Docs. A/RES/62/149(2007), A/RES/63/168(2008), A/RES/65/206(2010), A/RES/67/176(2012), A/RES/69/186 (2014), A/RES/71/187(2016), A/RES/73/175(2018)

- Welcomes the growing international movement towards abolition and the increasing number of countries introducing moratorium.

Operative Paragraphs:

- *Reaffirms* the sovereignty of each country, including the right to establish appropriate legal penalties within the scope of international law obligations.
- *Expresses deep concern* about the retention of the death penalty.
- *Calls upon* states to establish a Moratorium on the execution of the death penalty with the view to abolishing the death penalty.
- *Calls upon* retentionist countries to progressively restrict the use of the death penalty and reduce the number of offenses for which it can be imposed.
- *Welcomes* domestic leadership and political leadership towards the abolition of the death penalty.
- *Calls upon* retentionist countries to respect international frameworks (especially the aforementioned minimum standards) that stipulate protective measures ensuring the rights of those sentenced to death.
- *Calls upon* retentionist countries to provide information regarding their use of the death penalty and their compliance with international standards ensuring the protection of the rights of those sentenced to death.
- *Calls upon* abolitionist countries to prevent the reintroduction of the death penalty.
- *Calls upon* countries to share information on the death penalty to enable informed and transparent domestic debates.
- *Calls upon* states to progressively restrict the use of the death penalty, ensuring that it is not imposed on individuals who were under 18 at the time of the crime, pregnant women, persons with mental disabilities, or persons with intellectual disabilities.
- *Calls upon* states to ensure opportunities for seeking pardon or commutation.

2.2.0 Issues Raised against the Topic and Explanation of Restriction of the Death Penalty

In Chapter 2, we explained how the death penalty has been abolished or restricted internationally, focusing on treaties, United Nations resolutions, and similar documents. In this chapter, we will delve into the issues raised regarding the death penalty itself and provide more detailed explanations of the regulations that limit its use, in addition to the perspective of the right to life mentioned earlier.

For simplicity, the differing opinions on the content of each section are explained by dividing them into the positions of retentionist and abolitionist countries. However, these differences are not necessarily limited to the divide between retentionist and abolitionist countries. Please be mindful of this point when conducting research for your delegated countries.

2.2.1.0. Problems Noted about the Death Penalty

This section introduces two major issues that arise when considering the validity of the death penalty: “the irreversibility of the death penalty and the possibility of wrongful convictions” and “the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment,” which are discussed in Sections 2.1.1 and 2.1.2, respectively.

2.2.1.1. The Irreversibility of the Death Penalty and the Possibility of Miscarriage of Justice

One of the primary issues raised concerning the death penalty is its irreversibility, coupled with the possibility of wrongful convictions.

[Irreversibility]

The death penalty is irreversible because it results in death. The concern is that, since no judicial system can entirely prevent wrongful convictions, there is a risk of imposing an irreversible death sentence on an innocent person. Imposing the death penalty on an innocent person constitutes a violation of the right to life.

[Counter Arguments by Retentionist Countries]

On the other hand, the retentionist countries argue that the irreversibility of punishment is not unique to the death penalty—just as time spent serving a prison sentence cannot be returned, the irreversibility of punishment applies to all forms of punishment. They contend that the fact of “irreversibility and the possibility of wrongful convictions” should lead not to the “abolition of the death penalty,” but rather to the “need to improve the judicial system.” Additionally, there is the viewpoint that, even if there is a possibility of wrongful convictions, it is more important to eliminate the potential danger to the public that could arise from failing to punish criminals.

2.2.1.2. Prohibition of Torture and Other Forms of Cruel which is Related to the Death Penalty

There is an argument¹⁴ that the death penalty might constitute torture or other cruel, inhuman, or degrading treatment as prohibited by Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture¹⁵¹⁶. The right not to be subjected to torture or other cruel, inhuman, or degrading treatment is considered an absolute right that cannot be suspended even in times of emergency, and the prohibition of torture is regarded as a

¹⁴ U.N. Doc. A/C.3/73/SR.47 para.55

¹⁵ The official name is "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (hereinafter referred to as "torture, etc." throughout this document).

¹⁶ U.N. Doc. A/RES/39/46

peremptory norm (jus cogens)¹⁷. If the death penalty were to be considered torture, then it would not be permissible.

While the ICCPR prohibits torture and other ill-treatment in Article 7, it permits the death penalty in Article 6. The Human Rights Committee, which interprets the ICCPR, has stated that the death penalty does not constitute torture or other ill-treatment within the scope of the ICCPR's provisions. However, this does not prevent arguments that the death penalty could be considered torture.

2.3.0. Restrictions on the Death Penalty – Prohibition of Arbitrary Executions

This section addresses arbitrary executions, which are deemed to be prohibited within the context of the death penalty. First, we'll briefly touch on what is considered arbitrary execution, and then we'll discuss each aspect in detail.

2.3.1. About Arbitrary Executions of the Death Penalty

The prohibition of arbitrary executions is widely restricted by the ICCPR, regional treaties, and United Nations resolutions. The debate on arbitrary executions broadly includes summary executions by the military or police without a trial, but the focus here will be solely on arbitrary executions related to the death penalty.

The standards for arbitrary executions are detailed in the minimum standards set out earlier, so please refer to those when reviewing the following points. The criteria for arbitrary executions are divided into substantive elements and procedural elements. The substantive elements include the prohibition of the death penalty for crimes other than the most serious ones, restrictions on the death penalty for vulnerable persons, and the requirement for equality and proportionality in the application of the death penalty. The procedural elements focus on the requirement that the death penalty must be based on law and that it must follow a fair trial process.

Additionally, it is important to note that there are countries that do not provide information related to the death penalty, which is a significant issue.

2.3.2. Crimes Punishable by the Death Penalty

The crimes for which the death penalty may be imposed vary from country to country. Some countries impose the death penalty only for specific crimes, such as crimes under military law, while others impose the death penalty for drug-related crimes or corruption.

¹⁷ A peremptory norm (jus cogens) refers to "a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted, and which can be modified only by a subsequent norm of general international law having the same character" (Article 53 of the Vienna Convention on the Law of Treaties).

In addition to murder, other crimes that carry the death penalty in many countries include drug-related crimes, espionage, property crimes such as corruption and bribery, kidnapping, apostasy, blasphemy, and terrorism-related crimes, among others.

What is important here is the difference in interpretation of “most serious crimes” as defined in the ICCPR and the minimum standards. As mentioned in 2.1.1. “most serious crimes” refers to “intentional killing” according to the UNHRC and “intentional crimes resulting in death or with other extremely grave consequences”¹⁸ according to the ECOSOC resolution. However, not all countries accept that interpretation, and some countries that recognize the death penalty as a statutory punishment for something other than the above, claim that the crimes for which their countries impose the death penalty constitute the “most serious crimes.”

The application of the death penalty for drug-related crimes is a good example. Although the UNHRC has stated that drug-related crimes do not fall under the category of “most serious crimes,” the death penalty for drug-related crimes is legally recognized in 30 countries around the world¹⁹ and the number of people executed has exceeded 1,000 in several years.²⁰ Regionally, the death penalty for drug-related crimes is widely recognized by law in Southeast Asia and the Middle East. In some countries, the death penalty is not limited to the production, transportation, and sale of drugs, but also includes possession and use of drugs as a statutory offense. These countries claim that the death penalty for drug-related crimes falls within the scope of the “most serious crimes” in their countries under the ICCPR.²¹

2.3.3. The Death Penalty to the Socially Vulnerable

This section outlines the death penalty for different categories of individuals. Currently, issues are raised against the death penalty for children, the mentally disabled, pregnant women and mothers of young children, and the elderly.

- **Children**

The sentencing of the death penalty is widely prohibited for those who were under the age of 18 at the time of the offense. International treaties such as the ICCPR (Article 6(5)), the Convention on the Rights of the Child (Article 37(a)), and UN resolutions, as well as regional treaties in various regions, prohibit the use of the death penalty on them. Only the U.S. and Iran allow death sentences and execution of persons who were under the age of 18 at the time of the crime. However, concerns remain about the enforcement of these prohibitions, even in countries where the death penalty for children is legally banned. Therefore, appropriate disclosure of information is necessary.

- **Persons with mental ill health**

The death penalty is widely prohibited for individuals with mental disabilities under treaties such as the ICCPR and United Nations resolutions. There had been no significant criticism

¹⁸ Mentioned in 2.1.1.

¹⁹ As of 2016. However, not all cases of these drug offenses have been subjected to the death penalty.

²⁰ U.N. Doc. A/71/372 para. 47

²¹ U.N. Doc. A/C.3/71/SR.25 para. 24

on this topic during the drafting of the ICCPR or the minimum standards, and no state has reported imposing the death penalty on persons with mental disabilities.

However, whether a country explicitly states the death penalty for the mentally disabled and whether death sentences and execution are actually carried out are two separate issues.

According to a report by the UNHRC, there are cases where the mental health of a person is not checked at all or not certified due to insufficient medical certification. Another issue is that the criteria for determining mental illness vary significantly from country to country, potentially leading to inadequate protection.

- **Pregnant women or those with small children**

Pregnant women and mothers of infants are widely prohibited from execution under international law, as few countries impose the death penalty in the first place. However, the extent to which a mother is considered to be the mother of an infant varies from country to country, and there have been cases where the death penalty was carried out 40 days after the birth of a child.

- **The elderly**

The prohibition against executing individuals aged 70 or older is outlined in ECOSOC and General Assembly resolutions, due to the decline in mental competency over time. However, few treaties explicitly include this prohibition, and several countries continue to execute elderly individuals.

2.3.4. Equality and Differences to the Application the Death Penalty in Reality

The death penalty must be applied equally, and a death penalty based on discrimination or disproportionality is considered arbitrary. However, it has been pointed out that the death penalty does work disproportionately against certain groups. Examples include the death penalty for foreigners, migrant workers, the poor, women, and sexual minorities, among others. It has also been pointed out that there are situations where equality is not maintained against the backdrop of procedural guarantees, such as the lack of guaranteed access to consulates by foreigners and the lack of provision of adequate lawyers for the poor who cannot hire their lawyers. This is also a problem concerning fair trials.

2.3.5. Fair Trial

The minimum standards state that fair trials should adhere to the provisions in Article 14 of the ICCPR. One issue raised in this context is the treatment of individuals who do not understand the language used in court. The ICCPR guarantees access to interpreters and appropriate legal representation, but these are often not provided when needed, and it is often the case that the legal representatives lack sufficient experience, which has been criticized.

Another issue is the insufficiency of evidence and the problem of wrongful convictions. In court, if there is insufficient evidence, the defendant must be presumed innocent; however, in practice, trial standards are not strictly applied, leading to convictions based on inadequate evidence, and

cases of wrongful convictions have been identified later. It is believed that there are also wrongful convictions beyond those that have been uncovered, especially in cases where technical evidence, like DNA testing, cannot be provided or where the death penalty has already been carried out, leaving no one to contest the wrongful conviction.

2.4.0. Supplementary Explanations for Understanding the Discussion on the Death Penalty

Chapter 4 provides a broad overview of the death penalty from a criminal justice perspective, focusing on the terminology essential for understanding the discussions made. Section 4.1 addresses the grounds and the current debate on the justification of punishment by the state, while Section 4.2 introduces the debate on public opinion and the death penalty.

2.4.1. Grounds for Justifying the Death Penalty

There are many justifications for punishment, including disabling²², preventive, and retributive. Among such justifications, the following is a very brief description of deterrence²³ and retribution, which are often asserted in the context of the death penalty.

It should be noted that the theory presented here is not a justification for the death penalty but a justification for why the punishment is imposed and does not necessarily lead to support for the death penalty.

- **Deterrence**

Deterrence is one of the ideas that the purpose of punishment is to reduce crime, and is a theory that seeks justification for punishment in reducing crime among the general population by intimidating them into committing crimes they have not committed.²⁴ When the issue of the death penalty was first addressed at the United Nations, deterrence was cited as one of the justifications for the death penalty. However, studies soon began to show that the death penalty has no deterrent value, and today there are studies on either deterrence or not, with no conclusive evidence on either. The lack of evidence of deterrence itself has been pointed out in the Resolution on a Moratorium on the execution of the death penalty and reports as one of the rationales leading to the death penalty moratorium, which aims to abolish the death penalty.

- **Retribution**

Retribution is a position that justifies punishment on the basis that the offender deserves it. Retribution differs significantly from deterrence, which is justified by reducing crime, in

²² The purpose of punishment is to incapacitate the offender so that he or she cannot commit a crime and to reduce crime.

²³ Without going into details, deterrence is one form of prevention.

²⁴ There are criticisms against placing deterrence as a justification for punishment.

that retribution considers the imposition of punishment commensurate with the offender to be good in and of itself.

Although retribution is commonly thought to mean “an eye for an eye and a tooth for a tooth,” it does not necessarily lead to the conclusion that the death penalty should be imposed on murderers, even in the case of retribution. It should be noted that retribution is a justification for punishment itself, and the question of what specific punishment should be imposed (i.e., what kind of punishment is appropriate for the murderer) is a separate issue within the concept of retribution. However, of course, this is not to deny cases in which retribution simultaneously takes the position of retaliation for the same harm.

In addition, there are many opinions on the question of what kind of punishment is appropriate, and what should be used as a criterion for determining what constitutes an appropriate punishment.

2.4.2. Public Opinion

Public opinion is sometimes used as a rationale for the death penalty. The idea is that public opinion is symbolic of a country's culture and values, and is an important foundation for democracy, and that therefore it is not possible to abolish the death penalty if public opinion is against it.

The abolitionist countries, on the other hand, cite the validity of public opinion polls, the fact that the process of abolition by the current abolitionist countries was not necessarily supported by public opinion, and the fact that public opinion sometimes turns in favor of abolition when the death penalty is abolished, as evidence that politics should not pander to public opinion but rather take the leadership to abolish the death penalty. The author also argues that the political leadership should take the lead in abolishing the death penalty, rather than pandering to public opinion.

Chapter 3: Topics

In Chapters 2-4, we have reviewed the international debate on the death penalty from the UDHR to the Resolution on a Moratorium on the Execution of the Death Penalty. We also examined current regulations and problems associated with them, and fundamental understanding of capital punishment. Based on this, Chapter 3 summarizes the key discussion points for this meeting regarding the moratorium on the death penalty.

3.1. Human Rights and the Death Penalty

This section addresses the relationship between human rights, particularly human dignity and the right to life, in relation to the death penalty.

Perceptions of human dignity and the right to life differ between countries. As outlined in Chapter 2, the right to life is considered an “inherent right” of all humans, meaning it is not granted by society but is fundamental to being human. and it is stipulated that “No one shall be arbitrarily deprived of his life.” The global stance on the death penalty was undesirable from a human rights perspective, leading to its bans on its reintroduction and increased restrictions.

Additionally, the right to life, described as a “supreme right”, fundamental to human dignity and other human rights, receives special protection. While the ICCPR does not directly define as a violation of the right to life, it recognizes it as an exception rather than a standard practice. Recent trends indicate a global movement towards the abolition of the death penalty is regarded as “progress in the enjoyment of the right to life²⁵”, and the UN Resolution on a Moratorium on the Execution of the Death Penalty states that “a Moratorium on the execution of the death penalty contributes to respect for human dignity and promotes the development of human rights.”

In contrast, retentionist countries argue that while international human rights law prohibits arbitrary executions, the death penalty itself is not explicitly banned. They claim it is not a form of torture and should not be considered a human rights violation. They assert that the interpretation of the UDHR and the International Bill of Human Rights by abolitionist countries is deliberate and that the death penalty is a matter of criminal justice rather than a human rights issue. According to this view, as long as the death penalty is not arbitrary and is administered following due process, it is not considered a human rights issue, and each country has the right to decide on capital punishment based on its societal, historical, and cultural context, and this decision should be respected by others. Additionally, they argue that the international trend toward abolition is not a global consensus but an imposition by Western countries, disregarding the legal, societal, historical, and cultural contexts of other nations. Consequently, proposed amendments by retentionist countries during death penalty moratorium conferences often focus on implementing the moratorium within the scope of national sovereignty.

Given these differences, opinions already diverge on whether abolition or moratorium contributes to human rights protection. This section sets the context of human rights and the death penalty as a foundation for debates on the moratorium and restrictions. Participants are encouraged to form their opinions based on various factors, including their laws, societies, histories, and religions. It is important to note that this discussion is not about whether the death penalty itself should be abolished or retained but about sharing perspectives as a basis for discussions on the moratorium and restrictions on the death penalty.

Discussion Point 1: Research Tips

- ✓ The understanding of the scope of human rights related to the death penalty varies greatly from country to country.

²⁵ A/RES/44/128 ANNEX

- ✓ Under international human rights treaties, the death penalty is an exception to the right to life, and there is no explicit provision that the death penalty constitutes torture or is against human dignity.
- ✓ Human dignity is considered the core of human rights, and the right to life is considered the supreme right among human rights.
- ✓ The death penalty has been treated as an exception among penalties and in recent years there has been a growing trend toward abolition of the death penalty.

→ **Based on the above, the goal is not to formulate specific policies but to establish principles for policy formulation.**

3.2. Moratorium on Execution and Restrictions on the Death Penalty

The second issue addresses the moratorium and restrictions on the death penalty. Based on the consensus formed in the discussion of human rights and the death penalty, we would like to discuss what kind of moratorium should be sought and under what circumstances the death penalty should be restricted.

Here, we will outline the current state of the death penalty moratorium and discuss key points to be considered. First, it is important to distinguish between the debate over a moratorium and the debate on abolition of the death penalty. The moratorium is intended as a temporary suspension of executions while discussions on abolition continue. Thus, the focus here is not on whether to retain or abolish the death penalty but rather on whether the suspension should be implemented during ongoing debate.

We will also review the current state of the UN Resolution on a Moratorium on the Execution of the Death Penalty. In recent years, the number of countries that have abolished or suspended the death penalty has steadily increased, and the resolutions of abolitionist countries have been consistently passed in all sessions. Retentionist countries have submitted amendments²⁶, which generally propose that the moratorium be implemented within the scope of national sovereignty. These amendments, however, have generally been rejected.

The number of countries supporting the Resolution on a Moratorium on the Execution of the Death Penalty has gradually increased over the past 11 years, as shown in the table below.

Table 1. Number of countries voting for the Resolution on a Moratorium on the execution of the death penalty

	2007	2008	2010	2012	2014	2016	2018
Yes	104	106	109	111	117	117	121
No	54	46	41	41	37	40	35

²⁶ An amendment refers to a modification of a resolution that has been submitted, revised, and resubmitted. Amendments can be classified as either friendly or unfriendly. Friendly amendments are supported by all original sponsors of the resolution, while unfriendly amendments are not supported by one or more of the original sponsors or involve changes made by a country other than the original sponsor that is inconsistent with the original resolution. The amendment proposed by retentionist countries is considered an unfriendly amendment.

Abstentions	29	34	35	34	34	31	32
Non-Voting	5	6	7	7	5	5	5
All	192	192	192	193	193	193	193

As can be seen, the number of countries supporting the Resolution on a Moratorium on the Execution of the Death Penalty has increased in recent years. However, it is important to note that not all abolitionist countries have abolished the death penalty for the same reasons, and their views on the abolition of the death penalty in other countries differ. For example, in European nations, the death penalty is considered a universal human rights issue rather than a matter of domestic jurisdiction, and they call for the abolition of the death penalty in other countries. On the other hand, countries that have abolished or suspended the death penalty while considering it a criminal justice issue rather than a human rights issue may support the direction of abolition and the moratorium while also agreeing that other countries should have the right to decide on the death penalty within their jurisdiction. These countries may vote in favor of both abolitionist and retentionist resolutions and amendments. Therefore, it is important to thoroughly understand the positions of various countries on the death penalty moratorium before entering discussions. Regarding restrictions on the death penalty, as mentioned in Chapter 2, various restrictions have been imposed on the crimes and the individuals to whom the death penalty may apply. These should be further discussed, using the latest reports and information.

Discussion Point 2: Research Tips

- ✓ The General Assembly has been discussing a moratorium on the abolition of the death penalty every two years.
 - ✓ The number of countries that have abolished the death penalty or placed a moratorium on the execution of the death penalty is increasing each year, and the number of countries that support this moratorium is also increasing.
 - ✓ The retentionist countries are seeking a moratorium within the limits of their sovereignty.
- **Based on the above, the discussion will focus on whether a Moratorium on the execution of the death penalty should be pursued, and if so, what form it should take.**
- ✓ Currently, the Covenant on Civil Liberties prohibits the arbitrary death penalty, and the minimum standards embody the arbitrary death penalty.
 - ✓ There is no consensus on the specifics of the limitation of the arbitrary death penalty, and various deviations have been observed.
- Based on the above, we will discuss the restrictions that should be added to the death penalty.

Discussion Overview

- 1 Scope of human rights related to the death penalty.
- ↓
- 2 What kind of moratorium or limitation on the death penalty is sought within the scope of topic 1.

It is important to note that even among countries that have abolished capital punishment, their stances on the abolition of capital punishment in other nations differ. For example, in European countries, capital punishment is considered an issue of universal human rights rather than a matter of domestic jurisdiction, which enables them to demand the abolition of capital punishment in other countries. On the other hand, countries that view capital punishment as an issue of criminal justice rather than human rights, and have therefore abolished or suspended its execution, may support the general direction of abolishing capital punishment or maintaining a moratorium. However, they also respect the sovereignty of other nations to determine the retention or abolition of capital punishment within their own borders. These countries have voted “Yes” on both abolitionist and retentionist resolutions or amendments. Given the complex nature of this issue, it is crucial to thoroughly investigate the stance of each country on the capital punishment moratorium before engaging in discussions.

Regarding the restrictions on capital punishment, as detailed in Chapter 3, various limitations have been placed on capital punishment, including the types of crimes to which it can be applied and the individuals who may be subjected to it.

3.3. Out of Agenda

In a Model United Nations conference, topics that cannot be discussed during the meeting are referred to as “Out of Agenda.” Content deemed Out of Agenda by the meeting supervisor, even if they are discussed in actual capital punishment moratorium meetings, cannot be included in the resolution.

➤ Human Rights Issues Unrelated to Capital Punishment

While capital punishment can be viewed as a human rights issue from various perspectives, discussions on human rights concerns that do not directly related to capital punishment itself—such as the rights of prisoners on death row unrelated to prison conditions or torture, or the consideration of alternative sentences like life imprisonment without parole from a human rights standpoint—are deemed out of agenda.

➤ General Discussions on Extrajudicial Executions

Discussions on executions without due process, including summary executions by the state and the state's response to executions carried out between private individuals, are recognized as problematic, particularly in relation to issues like discrimination. However, these topics are considered out of agenda for this conference. Additionally, any discussions on genocide are prohibited.

➤ Overly Specialized Discussions on Domestic Law and Criminal Justice Systems

Detailed discussions on national legal systems, such as whether capital punishment violates a country’s constitution or how to improve criminal justice systems, are Out of Agenda.

➤ Discussions on Extradition to Capital Punishment Retentionist Countries

Although there is debate over whether it is appropriate to extradite criminals to countries

that retain capital punishment where they may face execution, this discussion is also considered out of agenda in this conference.

➤ **Other discussions that deviate significantly from the main topics or are overly specialized**

Please note that not everyone may share your knowledge, and while specialized or legal discussions may become heated, always consider whether the entire assembly is able to follow the discussion.

Chapter 4: Research Resources

While this background guide primarily outlines existing treaties, systems, and the current state of international conferences, it does not delve deeply into the specific circumstances of each country. Below are resources that may be helpful as you research your assigned country:

【Books】

The books listed in the references may be difficult for students to access, so we recommend the following more accessible resources. These books provide basic information that complements the background guide and will help in deepening your understanding of the topic:

- Hiroki Abe, “Living with International Human Rights” (2014)
This book provides an overview of various aspects of international human rights, including gender and refugees. This book explains various aspects of international human rights, such as gender and refugees. On pages 186-206, under the title '20 Years After the Entry into Force of the Abolition of the Death Penalty Treaty—How Has the World Changed?', it discusses current United Nations debates and international trends concerning capital punishment.
- Peter Hodgkinson & William A. Schabas (eds.), “Capital Punishment: Strategies for Abolition” (2004): This book covers a wide range of topics related to capital punishment, from international debates to domestic perspectives and situations in various countries. While the book takes a consistent abolitionist stance and discusses alternative sentences, which are out of agenda in this conference, it is still a valuable resource.

【International Treaties and Resolutions】

- Universal Declaration of Human Rights (UDHR) A/RES/217(III)[A]
Adopted by the UN General Assembly in 1948, this resolution does not have legal binding power but is considered universally valid in all countries today, including those that abstained from the vote at the time. Declaration is available to read on the United Nations High Commissioner for Human Rights(OHCHR) website:
<https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>
- International Covenant on Civil and Political Rights (ICCPR) A/RES/2200A(XXI)
Signed 18 years after the adoption of the UDHR, this treaty sets out provisions related to

civil and political rights, including the right to life (Article 6), prohibition of torture (Article 7), and the right to a fair trial (Article 14). The ICCPR has a monitoring institution called the Human Rights Committee, but note that not all countries are signatories, and some have made reservations (the validity of these reservations is a separate issue). This resolution is available to read on the OHCHR website:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

- First Optional Protocol to the ICCPR A/RES/2200A(XXI)
The Individual Communication Procedure under the International Covenant on Civil and Political Rights (ICCPR) provides a mechanism for individuals, rather than states, to submit complaints regarding human rights violations directly to the Human Rights Committee, which then adjudicates these cases. This is an exceptionally rare system in international law, where typically only states are recognized as parties to legal disputes. While this protocol may not be widely prioritized, it is important to be aware of its existence. This resolution is available to read on the OHCHR website:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political>
- Second Optional Protocol to the ICCPR (Abolition of Capital Punishment) A/RES/44/128
This protocol establishes the prohibition of executions and outlines measures for the abolition of capital punishment. Adopted in 1989 and entering into force in 1991, it currently has 87 states parties. This resolution is available to read on the OHCHR website:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/second-optional-protocol-international-covenant-civil-and>
- General Comments by the Human Rights Committee
General Comments are interpretive guidelines adopted by the Human Rights Committee to clarify and elaborate on the ICCPR's provisions, with the aim of ensuring sufficient reporting on the implementation of the ICCPR by states. While not legally binding, these comments provide valuable insights. This resolution is available to read on the OHCHR website:
<https://www.ohchr.org/en/treaty-bodies/general-comments>
- Convention Against Torture A/RES/39/46
Adopted in 1984, this treaty prohibits the intentional infliction of severe physical or mental pain by the state. This resolution is available to read on the OHCHR website:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

【Key Regional Treaties on Capital Punishment】

- European Convention on Human Rights (ECHR)
English: https://www.echr.coe.int/Documents/Convention_ENG.pdf

American Convention on Human Rights

English: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.html>

- African Charter on Human and Peoples' Rights (Banjul Charter)

English: https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf

- ASEAN Human Rights Declaration

English: https://www.asean.org/storage/images/ASEAN_RTK_2014/6_AHRD_Booklet.pdf

【Universal Periodic Review (UPR)】

The Human Rights Council conducts a “Universal Periodic Review” every four years, in which the human rights records of all UN member states are examined. This review includes reports on capital punishment and can be helpful in researching your assigned country or others. You can access reports from here: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>

【Resolutions, Reports, and Meeting Records】

For an overview of document numbers related to UN documents, refer to the following table:

Table 2. Rules Regarding Document Numbers for United Nations Documents

General Assembly Resolution	A/RES/Session/Serial Number
Draft Proposals [Draft Resolution • Unfriendly Amendment ⁴⁴]	A/C.Committee/Session/L.Serial Number
General Assembly Summary Record	A/C.Committee/Session/SR.Number
Secretary-General's Report or Note Submitted to the General Assembly	A/Session/Serial Number
ECOSOC Resolution	E/RES/Year/Serial Number
Human Rights Council Documents	A/HRC/

⁴⁴ A friendly amendment replaces the original draft resolution, and therefore takes the form '(original draft resolution document number)/Rev. serial number.' See also footnote 43

“Moratorium on the use of the death penalty” Resolutions⁴⁵

A/RES/62/149, A/RES/63/168, A/RES/65/206, A/RES/67/176, A/RES/69/186, A/RES/71/187, A/RES/73/175, etc.

Retentionist Countries' Amendments⁴⁶

A/C.3/71/L.54, A/C.3/69/L.66, A/C.3/67/L.66, A/C.3/67/L.65, etc.

Summary Records

A/C.3/62/SR.26, A/C.3/62/SR.30, A/C.3/62/SR.31, A/C.3/62/SR.39, A/C.3/62/SR.44,
A/C.3/62/SR.45, A/C.3/62/SR.46, A/C.3/62/SR.26, A/C.3/73/SR.46, A/C.3/62/SR.26, etc.

UN General Assembly Reports

A/73/260, etc.

“Extrajudicial, Summary or Arbitrary Executions” Secretary-General's Notes

A/74/318, A/71/372, etc.

The document number is added after “<https://undocs.org/>” to access the document.

⁴⁵ The content is nearly identical, so it is not necessary to read everything.”

⁴⁶ This also contains many similar items, so reading everything is not required.”

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