



Blog Post
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Voting for a Moratorium on the Use of the Death Penalty at the UN General Assembly: Towards a More Inclusive Multilateralism

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The global human rights agenda hasn't been immobilised by the coronavirus pandemic. A prime illustration is the resolution calling for 'A Moratorium on the Use of the Death Penalty'; an important mechanism that should be adopted by the UN General Assembly this year. The resolution serves as a focal point for the anti-death penalty movement, charting progress by reference to each state's vote. [A favourable trend towards the global abolition of the death penalty has been observed in this context.](#)

Within the pandemic's squall, are there any impediments to a successful vote on this issue? What expectations exist within the anti-death penalty movement at this time? Is the international legal status of the death penalty a factor in the vote? These questions arise alongside broader challenges to the efficacy of the UN system. At a '[pivotal moment](#)', it is

probably right that [‘we have a surplus of multilateral challenges and a deficit of multilateral solutions’](#) but there is also a tangible opportunity to create new methods of international cooperation within the UN structure. Will a more inclusive multilateralism emerge?

The Voting Process and Potential Impediments

The 75th Session of the UN General Assembly is going ahead in New York and the Inter-Regional Task Force for a Moratorium on the Death Penalty, an informal group of countries responsible for drafting the resolution, [has just tabled their work with the Third Committee](#). The Third Committee is allocated a broad programme of social, humanitarian and human rights issues by the General Assembly, including the death penalty. We can expect an initial vote on the resolution within the Third Committee to occur very shortly, before a final determinative vote by the General Assembly in December. The anti-death penalty movement has come to rely upon the two-year cycle upon which this resolution operates.

Of course, the vast majority of advocacy in relation to the resolution, particularly from civil society organisations, is taking place remotely and it’s fair to regard that as a disadvantage for the abolitionist community. The current UN human rights system remains somewhat geared towards in-person representations, at least in relation to the passage of resolutions at this level. Online side-events led by the [EU Delegation to the UN, FIACAT, ECPM](#) and other national co-sponsors, have been important contributions and should be regarded as the precursor to more deeply embedded and sophisticated methods of digital coordination.

Expectations of the Anti-Death Penalty Movement

The anti-death penalty movement’s core objective for the vote is clear. Principally, it’s sought for the outcome of the 2018 vote to be reinforced. When the resolution was first introduced in 2007 there were 104 votes in favour. [The 2018 vote](#) exhibited a growing trend towards the global abolition of the death penalty; 121 nations voted in favour and only 35 votes were recorded in opposition. The remainder filed abstentions or were absent from the vote.

This year, states are being called upon to vote for the resolution in comparable, perhaps even record numbers. Kazakhstan, Angola and Armenia’s recent adoption of the [Second Optional Protocol](#), an openness to reform in the [Democratic Republic of the Congo](#), and moratorium conditions [in Malaysia](#) should, collectively, give all voting nations confidence that the resolution reflects a current trend towards international reform.

Voting in support of the resolution isn’t reserved for states who have already prohibited the death penalty at law. Rather, some states vote in a way that directly contrasts with their domestic legal position. Their support for the resolution may be representative of a more preliminary stance; a retentionist state’s preparedness to contemplate de facto and de jure prohibitions that could be implemented in the future. [Daniel Pascoe and Sangmin Bae](#) characterise this as ‘strong idiosyncratic’ voting; a form of ‘aspirational’ signal, whether to foreshadow imminent domestic reform or as an expression of more nascent developments linked to relationships with abolitionist states. I suggest that we regard votes of this nature as an advantageous expression of the political fallibility of the death penalty.

Taking Malaysia as an example, the 2018 election brought about a new government and an announcement that the death penalty was to be abolished [‘in line with the move away from capital punishment in the rest of the world.’](#) The death penalty was not regarded as an essential

social or cultural component of the future of the country. A moratorium was quickly instituted, and Malaysia voted in support of the 2018 resolution. Since then, the immediate focus has narrowed and is reflected by the remit of the Special Committee to Review Alternative Sentences to the Mandatory Death Penalty. Nonetheless, moratorium conditions persist in Malaysia and their [vote in favour of the resolution would accurately reflect the current scenario](#). Although that may not appear to be phenomenally transformative, it is a compelling illustration of the political capacity to lead on this issue.

Other inconsistencies and ‘weaker contradictions’ identified by Pascoe and Bae, including absences and abstentions from the vote, should also be considered. Whilst some abstentions are accurately portrayed as a positive indication, the motivation for other votes in these categories can be more ambiguous. It’s also apparent that many states’ basic voting intentions may not become entirely clear until a very late stage. A parallel can be drawn to anti-death penalty advocacy at the UN Human Rights Council. In my experience, seeking to secure the Council’s adoption of the Resolution on the Question of the Death Penalty at the 42nd Session in 2019, similar difficulties exist for parties interested in reliably ascertaining national instructions for the vote. I suggest that these issues could be remedied by the introduction of a more robust system of coordination within the abolitionist movement so that national advice and directions can be reconciled well in advance of the proceeding.

There is also more overt opposition to this year’s resolution before the General Assembly. Some states, like Singapore, are projected to vote against the measure. Their votes are, arguably, of a diminished value in light of the broader international trend to reform and the international legal position advanced since the 2018 vote.

The Death Penalty at International Law

The international legal status of the death penalty should be a fundamental consideration for all states preparing to vote. It must be acknowledged that international law has not yet successfully overwhelmed the death penalty and that permissive provisions still exist within the International Covenant on Civil and Political Rights, chiefly the ‘most serious crimes’ threshold derived from Article 6(2). However, Article 6(6) asserts that:

nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

This proposition would appear to be increasingly authoritative when overlaid with abolitionist practices in a substantial majority of states.

The Human Rights Committee, in their [General Comment No. 36](#), apply the Article 6(6) agenda in the following terms,

that States parties that are not yet totally abolitionist should be on an irrevocable path towards complete eradication of the death penalty, *de facto* and *de jure*, in the foreseeable 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 progressive development of human rights.

The Committee’s anticipation of global reform in the foreseeable future is a central component of the international legal status of the death penalty, evidenced by the adoption of this statement

within the UN Human Rights Council's [Resolution on the Question of the Death Penalty](#), and it should guide all states in their approach to the vote on the moratorium resolution. In a period where many countries are wrestling with foundational challenges to the administration of their systems of criminal justice, it is worthwhile recognising that the death penalty sits at the absolute extremity of judicial sanctions; a capricious, irreparable and often discriminatory penalty that needn't be retained.

A More Inclusive Multilateralism

Operating within the UN paradigm, it's difficult to avoid being drawn into a hazier dialogue concerning the future of these institutions. The Secretary-General has sought to utilise the 75th anniversary as a means to spur on the development of an innovative and inclusive multilateralism; an environment in which governments are best equipped to meaningfully collaborate with their civil society counterparts. The UN's ambition to develop '[permanent platforms of co-operation, with a multi-stakeholder approach](#)' shouldn't be limited to corporate input and soft regulatory matters. Those who rely upon direct engagement with governments in order to secure human rights protections can also be responsible for creating new platforms and approaches that will reinvigorate our system of cooperative international responsibilities. The death penalty stands out as a vehicle through which that may be achieved, and the passage of the upcoming resolution will strengthen the mandate to do so.

[Monash Law's Eleos Justice](#) initiative is taking up these challenges in pursuit of a global environment in which the death penalty is unlawful; in any setting, for any crime. In order to give effect to the call for a closer, more inclusive and responsive international legal order, we are prioritising the development of collaborative methods and digital tools that abolitionist governments and civil society leaders can rely upon to enhance our collective impact.

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