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Phone: +91-8351033361,

Email: lawjournal@lawaudience.com, info@lawaudience.com,

Website: www.lawaudience.com,

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**CAPITAL PUNISHMENT: A MODE OF JUSTICE OR MEANS OF OPPRESSION?**

AUTHORED BY: MR. TEJAS HINDER & CO-AUTHORED BY: MR. SHASHWAT  
JOSHI, NATIONAL LAW INSTITUTE UNIVERSITY, BHOPAL.

**I. ABSTRACT:**

*As proclaimed by the Universal Declaration of Human Rights, which was adopted on December 10, 1948, “everyone has the right to life” and “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The death penalty was explicitly mentioned as an exception to the right to life, when the provisions of the Universal Declaration of Human Rights were transformed into treaty law in Universal and Regional instruments. With international custom becoming increasingly abolitionist, an increased number of states have started regarding the death penalty as being inconsistent with standards of human rights.*

*Through this paper, we wish to highlight the fact that although the death penalty, according to international law, is legal, it is extremely likely that the progress towards abolition will continue to take place, and elucidate on the same. We also wish to condemn arguments favoring the retention of the death penalty, which appear to rely on unproven allegations, like its deterrent effect, or focus exclusively on the argument that the decision to retain or abolish the death penalty solely rests with the sovereign nation. It is also notable that arguments that rest on religious and cultural grounds are criticized when deeply investigated, and have proven ineffective in preventing other nations from abolition.*

*Even though many grave offenders are sentenced to death, i.e. they are subject to capital punishment, in many nations, with continuous evolution, it can be said that the present time is too premature to discuss customary or universal norms. One just needs to think about the development of other fundamental rights, for example, the preclusion of slavery and torture, as authoritative or jus cogens norms.*

**II. INTRODUCTION AND BACKGROUND:**

“Everyone shall have the right to life and no one shall be subjected to torture or cruel, inhuman or degrading punishment.” This has been proclaimed by the Universal Declaration of Human Rights, which was adopted on December 10, 1948. A similar method of approach

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was adopted by the American Declaration of the Rights and Duties of Man, which was formally adopted on May 4, 1948.<sup>1</sup> The death penalty, at that time, was recognized as an apt punishment for major war criminals. The same was imposed by the postwar tribunals at Nuremberg and Tokyo. Moreover, many of the member states of the United Nations employed capital punishment at that time. The death penalty was notably stated as a form of exception to the right to life, when the provisions of the Universal Declaration were transformed into treaty law in both national as well as international instruments.<sup>2</sup> It is nearly seventy years after the adoption of the Universal Declaration of Human Rights, a continuously increasing gap between human rights and the death penalty can be observed. It can be noted that the International Criminal Court and the Ad Hoc tribunals of the former Yugoslavia and Rwanda rule out the possibility of the death penalty even for the most heinous crimes.

As on the present date, international treaties dealing with human rights have been completed with additional protocols that prohibit capital punishment. With more than 100 nations have now abolished the death penalty, it is worth noting that the essentiality of setting up of international standards was proved and supported by parallel developments in regional legal systems. The number of countries is expected to grow. It is also worth recognizing that, this very list has grown steadily from a few abolitionist states in the founding year of the United Nations, i.e. 1945, to nearly more than half of the countries in the world have abolished capital punishment or death penalty either 'de facto' or 'de jure'.

It is stated by the Secretary-General in his report to the Commission on Human Rights.<sup>3</sup> Countries that have retained Capital Punishment find themselves subject to increasing international pressure in favor of abolition. At times the pressure that a country is subjected to turns out to be so evident, that it does not go unnoticed by the international community. An example of the same would include refusal to grant extradition, when a fugitive is to be subject to a capital sentence in the nation from which he has been absconding. Abolition of

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<sup>1</sup> American Declaration of the Rights and Duties of Man, art. 1, O.A.S. Doc. OEA/ ser.L./V./I.4 (1948).

<sup>2</sup> American Convention on Human Rights: "Pact of San Jos6, Costa Rica," Nov. 22, 1969, art. 4, 1144 U.N.T.S. 123, 145 (entered into force July 18, 1978) (allowing death penalty); International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 6, 999 U.N.T.S. 171, 174-75 (entered into force Mar. 23, 1976) (same); Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 2(1), 213 U.N.T.S. 221,224

<sup>3</sup> Question of the Death Penalty: Report of the Secretary-General submitted pursuant to Commission resolution 1997/12, U.N. ESCOR, Hum. Rts. Comm'n, 54th Sess., 82d mtg. 18, at 10, U.N. Doc. E/CN.4/1998/82 (1998)

the death penalty is viewed as an essential component for the democratic development of states the predominant history of fear, foul play, and restraint. In a few states, abolition is affected by unequivocal reference to the sacred instruments of the global arrangements forbidding the death penalty. In others, it has been the commitment of the legal fraternity that has achieved the abolition of the death penalty. Judges have connected constitutions that make no particular notice of the death penalty, however, cherish the privilege of life to preclude barbarous, cruel, and debasing treatment or discipline. In this way, the topic of the abolition of the death penalty remains as one of the most honed precedents of both the advancement of human rights standards and the progressing significance of the extensively worded messages in the Universal Declaration.

In 1948, recommendations made by The Universal Declaration of Human Rights, which referred to the death penalty as an exceptional case to the Right to Life, were rejected by Ren Cassin and Eleanor Roosevelt. They did this not on the grounds that worldwide law had achieved the phase of abolition, but because they saw such a pattern rising and needed the UD to hold its pertinence for a long time, and maybe even hundreds of years to come. While it is untimely to proclaim the death penalty denied by standard global law, we are unmistakably somewhere amidst such a procedure, and significantly near the objective in reality.

### **III. ARBITRARILY DEPRIVED: THE RIGHT TO FREE AND FAIR TRIAL.**

The protection against being ‘arbitrarily deprived’ of one’s life, and the requirement that the death penalty not be imposed when the Covenant is otherwise breached, are two heads under which Article 6 of the International Covenant on Civil and Political Rights demands a fair trial before the imposition of death penalty. It has been interpreted by the Human Rights Committee, which is the body responsible for monitoring the compliance of State Parties with the ICCPR, that a death penalty may not be imposed, unless a fair trial, observing all the provisions of the International Covenant on Civil and Political Rights, is held.<sup>4</sup> This includes

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<sup>4</sup> Louise Arbour, In the Matter of Sentencing of Taha Yassin Ramadan, Application for Leave to Intervene as Amicus Curiae and Application in Intervention of Amicus Curiae of United Nations High Commissioner for Human Rights (Iraqi Tribunal: 8 February 2007)

recognized international requirements including<sup>5</sup>, but not limited to: -

- Being informed promptly and in detail of the charges;
- For translation or interpretation into one's own language to be provided;
- Presumption of innocence; the counsel of one's choosing;
- Sufficient time to prepare a defence; a trial to be held without undue delay;
- For the hearing to be heard by an independent and impartial tribunal;
- For the right of review by a higher tribunal

According to the Court, the imposition of death sentence on an individual as a consequence of an unfair trial amounts to wrongful subjection of the accused to the fear of execution. Such anguish, given that the life of the accused is at stake, cannot be dissociated from the arbitrariness of proceedings instituted, undermining which, it becomes unlawful under the Convention. Having respected the dismissal by the Contracting Parties of the death penalty, or, in other words, observed as having any genuine place in a popularity based society, the inconvenience of a capital sentence in such conditions must be considered, in itself, to add up to a type of brutal treatment.<sup>6</sup>

#### **IV. THE RIGHT TO LIFE:**

Domestic Constitutions were looked up by the drafters of the UDHR, who carried the aim of preparing a document that would be termed, "a common standard of achievement for all peoples and all nations." These constitutions, which have been consulted, also heavily draw inspiration from the principles of the English Bill of Rights, The American Declaration of Independence and the French Declaration droits de l'homme et du citoyen. On the top of the list of this international catalogue of human rights, is the 'right to life'. There has been a development in the scope of the 'right to life' since it was first announced in the 18<sup>th</sup> century. This has been a result of the pain that has been taken by participating nations in the drafting process to point out the ways to implement this right, and the key areas where this right could possibly have scope for development. To recognize the right to life, it is a necessity to

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<sup>5</sup> (Reid v Jamaica Communication No. 250/1987, Views adopted on 20 July 1990 at para 11.5, U.N. Doc. CCPR/C/51/D/355/1989 (1994)).

<sup>6</sup> (Ocalan v Turkey European Court of Human Rights (First Section) Application 46221 /99, Judgement of 12 May 2005 at para 169)

recognize the right to life as an absolute right, and capital punishment, which is characterized by the ordered and volitional taking of human life by the organized state, and it violates an individual's absolute right to life. Moreover, for an individual to enjoy other inalienable and egalitarian privileges granted to him by birth, the recognition of his right to life as an absolute right is essential. It comes as a pre-condition further leading the list of rights and privileges.

The right to life of an individual and its different application in various political circumstances stands out as one of the most discussed topics of today. This inquiry is important today for a number of reasons: the widespread demand for abortion, the impetus that the right to die movement has gained, and people challenging capital punishment. The debate is sometimes confusing: those that oppose all forms of war seem to support abortion; while others who strongly oppose abortion seem to be at ease with the ideas of war and capital punishment. A disappearance of this inconsistency can be observed once an absolute view of man's life, under which capital punishment is not justified, is recognized.

## **V. CUSTOMARY NORMS:**

Customary international law exists when there is evidence of *opinio juris*, which, in international law means acceptance of a practice that is sufficient to create legal obligations. It has been noted by the International Court of Justice in the case of *Malta v. Libya*<sup>7</sup> that substance of customary law had to be looked for, then *opinio juris* and actual practice of states had to be looked into. It is necessary for custom to be recognised among states as a genuine practice, which is thus obligatory. With somewhat less than half of the world's states still employing the death penalty, it would be too ambitious to assert that abolition is a customary norm of international law. However, a strong argument can be made that some or all of the limitations on the use of the death penalty enumerated in Article 6 of The International Covenant on Civil and Political Rights have attained the status of customary law. When there is proof of practice by state accompanied by unequivocal manifestations of policy or *opinio juris*.<sup>8</sup> The requirement that strict procedural safeguards accompany any capital trial undoubtedly has become customary international law. The universal condemnation of summary executions within the human rights bodies of the United Nations shows that there is unanimity on this point. Moreover, common article 3 of the Geneva

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<sup>7</sup> [1984] ICJ Rep 3

<sup>8</sup> Statute of the International Court of Justice, art. 38, 1989 I.C.J. Acts & Docs. 61, 77



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Conventions, often cited as the lowest common denominator of humane behaviour, prescribes such (entered into force on Oct 21, 1950). The International Court of Justice has held that common Article 3 codifies as a customary rule.<sup>9</sup>

The precondition for the need of strict procedural safety measures to be an essential component of any capital trial, has become a customary international law. The unanimity on this point is evident due to the strict opposition to summary executions within various commissions and statutory bodies designed for the purpose of keeping a check on human rights violations, and draft legislations or pass resolutions to prevent the same, such as the Human Rights Commission and the United Nations Human Rights Council. Moreover, Article 3 of the Geneva Convention, which is common in all of the Geneva Conventions, proscribes, "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."<sup>10</sup>.

It has also been held by the International Court of Justice that a customary rule has been codified by common Article 3.<sup>11</sup> The prohibition of juvenile and children from execution for the crime committed by them is another customary principle. The fact that children or even juvenile in certain cases should not be held criminally liable, as they lack maturity, and are incapable of understanding the nature and consequences of their act, is taken into consideration by this rule. It has been stated by the Inter-American Constitution on Human Rights that the prohibition of execution for juvenile is a customary norm, although there has been a noteworthy pause in its declaration of the minimum age as 18.<sup>12</sup> However, it has been concluded by the commission that there is a scope for the emergence of a norm, which would declare 18 as the minimum age. Recently, a The Human Rights Commission has proposed a comparing dithering in its ongoing General Comment on reservations, which asserted that the execution of youngsters and pregnant ladies was in opposition to standards, however they did not determine the exact minimum age. Both the International Covenant' and the American Convention on Human Rights, in addition to the Convention on the Rights of the Child, the

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<sup>9</sup> (Nicar. v. U.S.), 1986 I.C.J. 14, 113-14, 129-30, 148 (June 27) (discussing article 3 and violations thereof);

<sup>10</sup> Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, Aug. 12, 1949, art. 3, 75 U.N.T.S. 135, 136

<sup>11</sup> Prosecutor v. Tadic Case No. IT-94-1-AR72, Int'l Crim. Tribunal for the Former Yugoslavia, Appeals Chamber Decision, § 98 (Oct. 2, 1995)

<sup>12</sup>Resolution No. 3/87, Case 9647 (United States) (1987), Inter-Am. C.H.R. 147, 172, OEA/ser.L.N./II.71, doc. 9 rev. 1 (1987)

Fourth Geneva Convention, and its two other conventions determine eighteen as the minimum age.

## **VI. THE PROHIBITION OF CRUEL, INHUMAN, AND DEGRADING PUNISHMENT:**

The same international legal instruments that protect the right to life also affirm the prohibition of torture and cruel, inhuman, and degrading treatment or punishment. The travaux préparatoires, which are materials used in the preparation of the ultimate form of a statute or an agreement, especially that of an international treaty. These instruments indicate that their drafters considered that the issue of the death penalty fell within the context of the right to life, rather than within the issues that are considered under the rubric of the prohibition of torture or cruel punishment.

Torture, cruel, inhuman, or degrading treatment or punishment is condemned by the same legal Instruments that protect the right to life, which also affirmed the prohibition of the former.<sup>13</sup> It has been shown by the travaux préparatoires that their drafters considered that the issue of the death penalty fell inside the setting of the right to life, as opposed to inside the issues that are considered under the rubric of the denial of torment or savage punishment.

However, it can easily be observed and comprehended by one that capital punishment may, by all means, be considered as ‘cruel, inhuman and degrading’, and thus, is a breach of international norms. While the two norms exist together in human rights law, and to the degree that the definition of the privilege to life seems to approve the death penalty, there is an unavoidable pressure, which at any rate conceivably, may restrict it. "Cruel" punishment is obviously not a static notion, as it reflects the "evolving standards of decency that mark the progress of a maturing society."<sup>14</sup> It has been recognized by International Tribunals that the norms governing human rights must be comprehended and implemented in a dynamic manner.<sup>15</sup> Hence, though death penalty was not deemed “cruel” in 1948, 1957 or 1969, it has been termed so, by many countries and commissions today, and the same may be expected even in future.

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<sup>13</sup> African Charter of Human and Peoples' Rights, art. 5; American Convention on Human Rights, art. 5, at 146; International Covenant on Civil and Political Rights, art. 7, at 175; Convention for the Protection of Human Rights and Fundamental Freedoms, art. 3, at 224; Universal Declaration of Human Rights, art. 5

<sup>14</sup> *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

<sup>15</sup> *Loizidou v. Turkey*, 310 Eur. Ct. H.R. (ser. A) §§ 71-72, at 26-27 (1995))

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In 1989, a larger part of the European Court of Human Rights held back before reasoning that the death penalty comprised remorseless, inhuman, and debasing punishment prohibited by article 3 of the European Convention in *Soering v. Joined Kingdom*.<sup>16</sup> Amnesty International, which interceded in the Soering case as an Amicus Curiae (Someone who is not a party to a case and may not necessarily have been solicited by a party to the case, but assists the court by offering information or expertise, or provides an insight, which have a bearing on the factual and legal issues of the case, typically presented in the form of a brief), contended that in spite of the fact that Article 2 and Article 1 of the European Convention approved capital punishment as an exemption to one side to life, the arrangement had turned out to be defective in light of the logically advancing substance of article 3, which disallows inhuman and corrupting punishment. The court looked at states rehearse for components that would aid translation.<sup>16</sup>

As the court noted, amid the 1980's, the individuals from the Council of Europe tend to the issue of abolition of the death penalty as a discretionary or extra rule to the European Convention, and is not a required or revising convention. In this manner, the European Court of Human Rights stopped before recommending that the European Convention presently restricts the death penalty, regardless of the terms of Article 2. The Strasbourg seat contemplated that, had the Member States of the Council of Europe looked for the European Convention to advance so as to prohibit capital punishment as a type of inhuman and corrupting punishment, as opposed to article 3, they would not have continued upon a discretionary convention.

Strategies for execution may themselves be cruel, inhuman, and degrading. The Human Rights Commission has confirmed that the utilization of the gas chamber in the State of California includes exorbitant and needless affliction and that is violative, in spite of Article 7 of the International Covenant on Civil and Political Rights. In any case, this puts human rights bodies in the awkward and improper position to decide on what is a more humane approach to slaughter a person.<sup>17</sup> The Committee has since inferred that execution by deadly infusion isn't cruel, inhuman, or degrading in spite of uncontested proof offered before it demonstrating that this more modern and elegant technique for execution additionally may

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<sup>16</sup> *Vienna Convention on the Law of Treaties*, May 23, 1969, art. 31(3)(b), 1155 U.N.T.S. 331, 340.

<sup>17</sup> *Report of the Human Rights Committee*, *Ng v. Canada*, supra note 79, at 220 (noting Christine Chanet's dissenting opinion).

include an awful affliction. Difficult issues of social relativism emerge in the translation of the standard precluding cruel, inhuman and degrading discipline. The extent of the three modifiers clearly relies on esteemed judgments, and these will shift contingent upon society and social conditions.

## **VII. INTERNATIONAL ORGANIZATIONS:**

### **A) UNITED NATIONS:**

The committee on crime prevention and control in its report on the implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty found that the concerns expressed by the United Nations Human Rights Committee about the inadequate progress made towards abolition or limitation of the application of death penalty were rightly based. This report is based on replies from seventy four countries.

The Economic and Social Council, in its resolution 1984/50 approved the safeguards guaranteeing the protection of the rights of the people facing death penalty with the prerequisite that they would not be used to delay or prevent the abolition of capital punishment. The safeguards protect the rights of those who have been charged with capital crimes and provide the rules to be followed in capital justice proceedings. They state that capital punishment can be only imposed on those charged with the most serious crimes. The safeguards cover inter alia, the right to benefit from lighter penalties under certain conditions and to appeal or seek pardon, exemptions from capital punishment for persons below eighteen years of age, pregnant women, new mothers and the person who have become insane, necessary evidentiary requirements and suspension of executions.

The states that retained capital punishment were invited to the Seventh United Nations Congress on the Prevention of Crimes and the Treatment of Offenders in its resolution 15 to adopt the safeguards and the necessary mechanisms required for their implementation. The Secretary General was also asked to widely publicize both the safeguards and the mechanisms for their implementation.

The office of the United Nations High commissioner on Human Rights (OHCHR) called on all countries to strengthen efforts for the abolition of the death penalty. It also called upon all states to ratify the Second Optional Protocol to the International Covenant on Civil and

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Political Rights (ICCPR). The ICCPR was adopted and opened for signature, ratification and accession by the General Assembly resolution 2200A (XXI) of 16<sup>th</sup> December 1966, it came into force on 23<sup>rd</sup> March 1976, in accordance with Article 49.<sup>18</sup>

The Second Optional Protocol was adopted and proclaimed by the General Assembly resolution 44/128 on 15<sup>th</sup> December 1989.<sup>19</sup> It is a side agreement to the ICCPR that aims at the abolition of the death penalty. It commits members to the abolition of the death penalty but Article 2.1 allows parties to make reservations for the execution of people convicted of the most serious crimes during war time. Brazil, Chile, El Salvador, Cyprus, Malta and Spain initially made such reservation but later withdrew them.

Article 6 of the ICCPR states that “i) 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, ii) 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 Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court, iii) 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, iv) 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, v) sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women, vi) 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.”<sup>20</sup>

It is evident that the United Nations has been striving for the abolition of capital punishment and in pursuance of this goal has adopted policies that are prima facie anti-death penalty. The 2007 moratorium on the abolition of the death penalty that the United Nations placed on the death penalty also points towards the fact that there is a constant effort by the United Nations

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<sup>18</sup> *International Covenant on Civil and Political Rights*, Office of the United Nations High Commissioner of Human Rights

<sup>19</sup> *United nations human rights office of the commissioner*  
<https://www.ohchr.org/en/professionalinterest/pages/2ndopccpr.aspx>

<sup>20</sup> Supra note 19

for the abolition of the death penalty. These efforts have to a great extent been successful with only some states retaining the death penalty.

## **B) EUROPEAN UNION:**

The European Union has become a leading regional force in the progress towards a world free of state-sanctioned judicial killing in the form of the death penalty. It also played an important role in the 2007 United Nations General Assembly moratorium on the abolition of the death penalty and its subsequent strengthening in 2008, 2010 and 2012.<sup>21</sup> The European Union's efforts towards the abolition of the death penalty is a success story for the pioneers of human rights and is one aspect of the regions abolitionist policies that were rewarded in 2012 with the Nobel Peace Prize.

The European Union has taken up a strong position towards the abolition of the death penalty and will continue to intensify its policies until a capital punishment free world is achieved. It has developed a standard of human rights that highlights abolitionism in the promotion of the right to life, the enhancement of human dignity, the prohibition against cruel and inhumane punishment, the necessity of ensuring effective representation, fair trials and appeals provisions and the opportunity of a final commutation of sentence. These policies are seen as providing an absolute abolitionist position, which has been affirmed by the Council of the European Union in its 2012 European Union Strategic Framework and Action Plan on Human Rights and Democracy.<sup>22</sup>

Article 2 of the Charter of Fundamental Rights of the European Union "Right to Life" states that "1) Everyone has the right to life, and 2) No one shall be condemned to the death penalty, or executed." The death penalty and executions are both prohibited under the Charter. Every part of the capital judicial system including the capital charge, the initiation of a capital trial, the sentence of death, placing people on death row, through to the final death sanctioned by the state in the execution of the inmate. Article 4 of the Charter states that "i) No one shall be subjected to torture or to inhuman or degrading treatment or punishment."<sup>23</sup>

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<sup>21</sup> Christian Behrmann & Jon Yorke, The European Union and the Abolition of the Death Penalty, 4 Pace Int'l L. Rev. Online Companion 1 (2013), <http://digitalcommons.pace.edu/pilronline/39/>.

<sup>22</sup> Press Release, European Union, EU Strategic Framework and Action Plan on Human Rights and Democracy (June 25, 2012), available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf).

<sup>23</sup> Charter of Fundamental Rights of the European Union, Dec. 18, 2000, 2000 O.J. C 364/1, available at [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

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It's been an ongoing debate in the Council of Europe since 1973 whether the death penalty is a violation of the right against inhumane punishment. The European Court of Human Rights has come up with its European Convention of Human Rights (ECHR) Article 3 analysis of the capital judicial system to cover i) the capital charge and the trial process, ii) the circumstances when a death sentence is commuted to life imprisonment, iii) extradition and deportation cases, iv) the initiation of a moratorium and the consequences of suspension of executions, v) the physiological and psychological impact of incarceration conditions, vi) different methods of execution, vii) the death row phenomenon as a jurisprudential consideration of the above factors collectively.<sup>24</sup>

It is possible to interpret that the death penalty is a per se violation of article 3 of the European Convention on Human Rights.<sup>25</sup> Now there is no bar that exists to the death penalty being considered as an inhumane and degrading punishment. Abolition of the death penalty is a prerequisite for a state seeking European Union membership. Once a member state has abolished the death penalty it cannot reintroduce it. The European Union has utilized its internal abolitionist strategies to form, assess and enhance bilateral and multilateral policies for its human rights external project.

In 2012 the European Union was awarded with the Nobel Peace Prize for all its policies aimed at abolition and the Peace Prize Committee highlighted the "European Union's contribution for over six decades to the advancement of peace and reconciliation, democracy and human rights in Europe."<sup>26</sup>

The European Union has as is shown taken up an abolitionist stance against the death penalty and is continuously strengthening its position. It has taken up many internal policies that indicate the same and has used these policies to formulate its external human rights initiatives. It has helped in changing the capital judicial background of the region and has completely altered the policies of the region by having the abolition of the death penalty as a prerequisite for membership, and preventing member states from reintroducing it. The

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<sup>24</sup> The Parliamentary Assembly Resolution 727 (1980), On the Abolition of Capital Punishment. This resolution set the Assembly's early standards on the abolition of the death penalty; see also, Parliamentary Assembly Recommendation 891 (1980) On the European Convention on Human Rights – Abolition of Capital Punishment, to the Committee of Minister's to solidify the Assembly's abolitionist standards to be communicated to the member states. See also PARL ASS. DEB. 32nd Sess. (Apr. 22, 1980).

<sup>25</sup> *Ibid*

<sup>26</sup> Nobel Peace Prize 2012 Awarded to the European Union, EUR. COMM'N (Oct. 12, 2012), [http://ec.europa.eu/news/eu\\_explained/121012\\_en.htm](http://ec.europa.eu/news/eu_explained/121012_en.htm).

European Union's initiatives and contributions towards abolition have been recognized by the Nobel Peace Prize Committee and been rewarded with the prestigious Nobel Peace Prize in 2012. The European Union has indeed taken great strides towards abolition and continues to do so ever so fervently.

### **VIII. INTERNATIONAL CRIMINAL LAW:**

International criminal law International criminal law is a branch of public international law that prohibits certain categories of offences commonly viewed as serious atrocities and aims to punish the perpetrators of this category of offences. The core crimes that are encompassed by international law are genocide, war crimes, crimes against humanity, and the crime of aggression. "Classical" international law governs the relationships, rights and responsibilities of states. International criminal law includes components of both in that in spite of the fact that its sources are those of international law, its outcomes are penal sanctions imposed on people. After the Rwandan genocide of 1994, the United Nations Security Council moved to establish an international tribunal to punish the people behind the planning of the entire genocide. Regardless of whether provoked by an earnest want for international justice or a self-serving want to mitigate blame for the absence of significant military intervention,<sup>27</sup> one thing is clear: the Council started a program that, when combined with its foundation of the International Criminal Tribunal for the Former Yugoslavia, spoke to the most significant international criminal justice since the Allied prosecution of German war criminals in Nuremberg.

But so much had changed since 1951. Though the Nuremberg forced capital punishments for the guiltiest instigators of the Holocaust,<sup>28</sup> there be no death penalties for the architects of the Hutu genocidal campaign. Over forty years, there was an ocean move in states of mind about the legitimacy of punishment. At the point when the Allies declared their choice to apply capital punishment at Nuremberg, few protested or recommended that executions would disregard international human rights. Indeed, Churchill was at first suspicious of the

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<sup>27</sup> See UN Doc. S/PV.3453, at 14 (1994) (comments in the Security Council of Rwandan representative Bakuramutsa, complaining that "the international community, which had troops in Rwanda and could hundreds of thousands of human lives by, for example, establishing humanitarian safe zones, decided withdraw its troops from Rwanda and to abandon the victims to their butchers"); id. at 15 (arguing that lishment of so ineffective an international tribunal would only appease the conscience of the international rather than respond to the expectations of the Rwandese people and of the victims of

<sup>28</sup> 4 Charter of the International Military Tribunal, annex to Prosecution Agreement, supra note 2, Art. Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace Humanity, CONTROL COUNCIL FOR GERMANY, OFFICIAL GAZETTE, Jan. 31.



arrangement for a crimes tribunal, assumed that what remained of the Nazi authority would basically be executed on the battlefield. As the procedures unfurled, there were isolated calls for mercy and leniency, and even grievances of victors' justice, however absolutely no recommendation that executions violated international law all things considered.

States have rarely forgone the death penalty after the genocide. In addition, too few domestic prosecutions for genocide have occurred to establish the emerging legal standard, and the international prosecutions are of little use. At last, our examination demonstrates that executions for genocide did not bring forth the international abolitionist development; dismay over executions for domestic offences assumed a bigger role in the advancement of the development. Subsequently, the evidence does not get the job done to establish either the objective or the subjective element of a general guideline of customary international law forbidding the death penalty in instances of genocide.

The death penalty has been abolished by law in around two-thirds of the world's countries. But in 2015, executions still took place in 25 countries, with the highest number of executions in China, Iran, Pakistan, Saudi Arabia and the USA. Although there are a number of inconsistencies between the capital punishment and international human rights standards, its implementation is not forbidden by universally binding international law.

Support for the death penalty is very common in Muslim-majority states, and the Sharia law is cited as its justification. During the drafting of Rome Statute for the International Criminal Court, many of these Muslim countries wanted the International Criminal Court to have the power to impose capital punishment. This proposal was rejected at the Rome Conference and none of the opposite international criminal tribunals imposes the capital punishment.

However, while most Rome Statute State Parties would not extradite anyone to stand trial in a country where the death penalty is still prevalent without being assured that it would not be used, there's presently nothing within the Rome Statute of the ICC to preclude the judges from ruling a case impermissible at the ICC, thereby allowing trial in a country that applies the death penalty. This raises issues with the role of the Court (and the United Nations Security Council) as to the trials Saif Gaddafi and Al-Senussi in Libya. They were both sentenced to death after a flawed trial in Libya, after having been the subjects of ICC arrest warrants.

So it is apparent that international law does not apply any stringent provisions for the abolition of the death penalty and it is completely a state-based decision. International law, however, does hold a persuasive standard that can lead towards the abolition of this practice. Even though there have been certain outliers the majority of the nations are in support of this movement. The death penalty can only be applied in the most serious cases as is allowed by certain international treaties.