

The Death Penalty in the OSCE Area

BACKGROUND PAPER 2009

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This paper was prepared by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). Every effort has been made to ensure that the information contained in this paper is accurate and impartial.

This paper updates *The Death Penalty in the OSCE Area: Background Paper 2008*. It is intended to provide a concise update to highlight changes in the status of the death penalty in OSCE participating States since the previous publication and to promote constructive discussion of this issue. It covers the period from 1 July 2008 to 30 June 2009.

All comments or suggestions should be addressed to ODIHR's Human Rights Department.

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Designed by Nona Reuter

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Foreword

This year's edition marks the 10th Anniversary of *The Death Penalty in the OSCE Area – Background Paper*. Since ODIHR started publishing this paper on a yearly basis, the global trend towards the abolition of the death penalty has continued. While nine¹ OSCE participating States still retained the death penalty in 1999, today two countries are left in the region that still apply capital punishment, one of which appears to be moving towards the introduction of a moratorium in the near future.

Although there are no OSCE commitments requiring the abolition of the death penalty, participating States have made a number of commitments regarding its use.² In particular, participating States have committed themselves only to impose capital punishment in a manner that is not contrary to their international commitments and to keep the question of whether or not to retain the death penalty under consideration.

Covering the period 1 July 2008 until 30 June 2009, this year's background paper, as in 2008, highlights in a concise manner developments that have occurred since the last publication.³ It was ODIHR's intention that the content of each country entry should be based primarily on information provided by the participating States themselves. All OSCE participating States have committed themselves to making information on the use of the death penalty available to the public.⁴ Accordingly, in June 2009, a questionnaire on the use of the death penalty was sent to each of the six participating States for which there were country entries in the 2008 edition.⁵ The questionnaire is reproduced in Annex 4. Belarus, Kazakhstan, Latvia and the United States responded to the questionnaire, while no reply was received from Tajikistan. The Russian Federation replied in writing that, due to the existing moratorium on

1 "The Death Penalty: List of Abolitionist and Retentionist Countries", Amnesty International, April 2000, < <http://www.amnesty.org/en/library/asset/ACT50/005/2000/en/34d7c521-df70-11dd-aaaa-7d9091d4638f/acr500052000en.pdf>>.

2 For a list of relevant OSCE commitments, see Annex 1.

3 For earlier developments, see "The Death Penalty in the OSCE Area, Background Paper 2008", OSCE/ODIHR, September 2008, http://www.osce.org/publications/odihr/2008/09/33276_1187_en.pdf.

4 Copenhagen Document 1990, para. 17.8., see Annex 1.

5 "The Death Penalty in the OSCE Area – Background Paper 2008", *op.cit.*, note 3. The six participating States that retained the death penalty in some way in 2008 were Belarus, Kazakhstan, Latvia, the Russian Federation, Tajikistan and the United States of America.

the application of the death penalty in Russia, it did not consider the questionnaire relevant given the country's current practice.⁶ Additional information was also collected from OSCE field offices,⁷ NGOs and media reports.

During the reporting period, there were some developments towards the abolition of the death penalty, and further efforts were made by the OSCE, the Council of Europe (CoE), the United Nations and the European Union to assist countries in this direction.

At the national level, Uzbekistan acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights on 23 December 2008, while Latvia is in the process of developing legislation for the abolition of the death penalty in all cases. A broad discussion on the introduction of a moratorium has also begun in Belarus. In the United States, the state of New Mexico abolished capital punishment, becoming the 16th state to do so. Despite this progress, the United States and Belarus continued carrying out executions during the reporting period.

At the international level, on 3 July 2009, the OSCE Parliamentary Assembly adopted its concluding document, the Vilnius Declaration, which outlined a set of policy recommendations to the governments of OSCE participating States.⁸ The Declaration, voted on by 213 parliamentarians from 50 OSCE countries, contained 28 resolutions, one of which was the "Resolution on a Moratorium on the Death Penalty and Towards Its Abolition".⁹ The resolution called on participating States retaining the death penalty to declare an immediate moratorium on executions.

On 18 December 2008, the UN General Assembly adopted by a large majority a second resolution on the death penalty, affirming the resolution adopted in December 2007 calling on all nations that still use the death penalty to institute a moratorium on executions with a view towards abolishing the practice.¹⁰ The resolution drew the supporting votes of 106 member states, with 46 votes against and 34 abstentions.

The CoE in 2007 established 10 October as the annual "European Day against the Death Penalty",¹¹ coinciding with the "World Day against the Death Penalty" launched by the World Coalition Against the Death Penalty in 2003. In 2008, the

6 Letter to the ODIHR Director from the Permanent Representative of the Russian Federation to the OSCE, dated 26 June 2009.

7 ODIHR is grateful to the OSCE Office in Minsk, the OSCE Centre in Astana and the OSCE Office in Tajikistan for responding to the questionnaire.

8 OSCE Parliamentary Assembly, AS (09) D 1 E, Vilnius Declaration, Vilnius, 29 June–3 July 2009.

9 *Ibid.*

10 United Nations General Assembly Resolution 63/168, "Moratorium on the use of the death penalty", A/63/430/Add.2, draft res. I., 18 December 2008.

11 Council of Europe, Decision CM(2007)137 and GR-EXT(2007)CB8, "European Day against the Death Penalty", 26 September 2007.

EU joined in marking this day and released a joint statement with the CoE. The document stated that the death penalty was contrary to the fundamental rights on which the EU and the CoE were founded, and that “since 1997 there has been no instance of capital execution in any part of the geographical area made up by the 47 Member States of the Council of Europe, including the 27 European Union Member States”.

In 2008, the EU also revised and updated its Guidelines on the Death Penalty, which were adopted in 1998 with the objective of enhancing work to eliminate the application of the death penalty worldwide. On the basis of these guidelines, the EU continues to work towards this goal.

I hope that this paper will be a useful resource for governments and civil society alike in the further discussion of issues relating to capital punishment and its abolition.

Ambassador Janez Lenarčič

*Director of the OSCE Office for Democratic Institutions
and Human Rights (ODIHR)*

The Status of the Death Penalty in the OSCE Area

For the purpose of this paper, each participating State has been classified as **abolitionist**, **partly abolitionist**, ***de facto* abolitionist** or **retentionist**, according to the status of the death penalty in the relevant state's law and practice.

Abolitionist: The death penalty has been abolished for all crimes.

Fifty OSCE participating States are abolitionist:

- | | | |
|--------------------------|-------------------|--|
| • Albania | • Ireland | • Turkey |
| • Andorra | • Italy | • Turkmenistan |
| • Armenia | • Kyrgyzstan | • Ukraine |
| • Austria | • Liechtenstein | • United Kingdom. |
| • Azerbaijan | • Lithuania | • Uzbekistan |
| • Belgium | • Luxembourg | • The former Yugoslav Republic of Macedonia |
| • Bosnia and Herzegovina | • Malta | |
| • Bulgaria | • Moldova | |
| • Canada | • Monaco | |
| • Croatia | • Montenegro | |
| • Cyprus | • Netherlands | |
| • Czech Republic | • Norway | |
| • Denmark | • Poland | |
| • Estonia | • Portugal | |
| • Finland | • Romania | |
| • France | • San Marino | |
| • Georgia | • Serbia | |
| • Germany | • Slovak Republic | |
| • Greece | • Slovenia | |
| • Holy See | • Spain | |
| • Hungary | • Sweden | |
| • Iceland | • Switzerland | |

Partly abolitionist: The death penalty has been abolished for crimes committed in peacetime but is retained for crimes committed in wartime.

Two participating States are partly abolitionist:

- Latvia
- Kazakhstan

***De facto* abolitionist:** The death penalty is retained for crimes committed in peacetime, but executions are not carried out.

Two participating States are *de facto* abolitionist:

- Russian Federation
- Tajikistan

Retentionist: The death penalty is retained for crimes committed in peacetime, and executions are carried out.

Two participating States are retentionist:

- Belarus
- United States of America

1. Abolitionist States

On 3 March 2009, **Italy** ratified Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) banning the death penalty in all circumstances and thereby becoming the 41st European country to take this step.

Uzbekistan acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights on 23 December 2008. Prior to that, Uzbekistan had abolished the death penalty as of 1 January 2008, when 48 individuals were still on death row, according to a report by one NGO.¹² On 29 April 2008, the Supreme Court started reviewing the death sentences pending at the time of abolition, commuting the death sentences to prison terms of either 20 or 25 years while deducting the time those sentenced to death had already spent in prison.¹³ No official data on the death penalty, including the number of sentences, executions and commutations, were published for previous years. On 20 March 2009, the UN Human Rights Committee adopted its Views on the subject of imposition of the death sentence after the trial of a defendant who alleged that he had been subjected to torture.¹⁴ In its decision, the Human Rights Committee ruled that torture or ill-treatment was used in order to force the accused to confess to a murder, thus violating the rights of the person under article 7 and article 14, paragraph 3 (g) of the International Covenant on Civil and Political Rights. According to the Human Rights Committee, Uzbekistan was thus obliged to provide the accused with effective legal remedies, including compensation, an investigation into the allegations of torture, and a re-trial. The Committee added, however, that the convicted person's right to life had not been violated, as claimed in the initial filing, because the death sentence had been commuted on 16 April 2004.

In September 2008, the Federal Court of **Canada** heard an application by Ronald Smith, a Canadian citizen who was sentenced to death in the US state of Montana in 1983 and remained on death row. Mr. Smith was challenging a recent change in Canadian policy, under which Canada would no longer seek clemency for its citizens sentenced to death in countries that it considered to be democratic and adherent to

12 Interview with Tamara Chikunova from Mothers Against the Death Sentence and Torture, Ferghana.Ru, 28 February 2008, <<http://enews.ferghana.ru/article.php?id=2335>>.

13 Country information on Uzbekistan, Hands Off Cain website, <<http://www.handsoffcain.info/bancadati/sched-astato.php?idcontinente=23&nome=uzbekistan>>.

14 Human Rights Committee, Views on Communication No. 1163/2003, 22 April 2009, CCPR/C/95/D/1163/2003.

the rule of law.¹⁵ The new policy had been introduced in October 2007 and, in March 2009, the Federal Court declared the government's approach to handling Mr. Smith's case "unlawful" and ordered it to resume its efforts for clemency with the government of the state of Montana. The government declined to appeal the ruling and said it would comply with the Federal Court order. In the same month, the United Nations Human Rights Council issued its Universal Periodic Review of Canada's human rights record and recommended that the policy of seeking clemency for all Canadian citizens sentenced to death in other countries be reinstated.¹⁶ Canada rejected this recommendation and stated that it would consider whether to seek clemency for Canadians facing the death penalty when such cases arose (i.e. on a case-by-case basis).¹⁷

Canada also reinforced its recent practice of requiring a no-execution guarantee from US prosecutors before returning any individuals to face capital charges. Arthur Charles Carnes IV, a citizen of the United States, was extradited on 15 May 2009 after attempting to gain refugee status in Canada on the basis that he could face capital punishment if sent back to the United States to face trial. The Canadian Government secured a guarantee from the US authorities that the suspect would not face the death penalty.¹⁸

2. Partly Abolitionist States

LATVIA

At present, the Criminal Code of Latvia allows for the imposition of the death sentences in convictions for murder with aggravating circumstances, and only when committed in wartime.¹⁹ The country is in the process of ratifying Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances, which it signed on 3 May 2002. On 19 May 2008, the Government of Latvia endorsed a draft law on the ratification of the Protocol, and parliamentary approval is being

15 Information on Canada in "Amnesty International Report 2009: State of the World's Human Rights", Amnesty International, 2009, <<http://thereport.amnesty.org/en/regions/americas/Canada>>.

16 Human Rights Council, Eleventh session, Agenda item 6, page 19, A/HRC/11/17, Report from the Working Group on the Universal Periodic Review of Canada, 3 March 2009.

17 Human Rights Council, Eleventh session, Agenda item, Addendum, page 8, A/HRC/11/17/Add.1, Report from the Working Group on the Universal Periodic Review of Canada, 8 June 2009.

18 "Canada: Murder suspect extradited with guarantee no death penalty", Hands Off Cain website, June 3 2009, <http://www.handsoffcain.info/archivio_news/200906.php?iddocumento=12308128&cmover=2>.

19 Article 37 of the Criminal Code, 15 October 1998, with amendments of 18 May 2000.

sought. Along with the draft law, corresponding amendments to the criminal law and other relevant legislation are being prepared.²⁰

In September 2008, several high-level officials, including the head of the parliamentary Human Rights and Public Affairs Committee, the Minister of Justice and the Minister of the Interior, called for a review of domestic law on the abolition of the death penalty with a view to its reintroduction, as a new capital punishment debate emerged in the country following the murder of a young girl.²¹ The President of the Parliamentary Assembly of the Council of Europe (PACE) expressed his concern about such statements saying: “Under no circumstances can the reintroduction of the death penalty ever be on the Council of Europe or European Union agenda again.”²²

Outside this discussion, on 9 January 2009, the Government of Latvia, through its Cabinet of Ministers, approved a Strategy on the Policy of Criminal Sanctions, which, *inter alia*, reaffirmed the Government’s support for the full removal of the death penalty from national legislation.²³

KAZAKHSTAN

In Kazakhstan, the death penalty has been abolished in all cases except acts of terrorism entailing loss of life and grave crimes committed in wartime.²⁴ On 10 July 2009, the President of Kazakhstan signed the Law “On the introduction of amendments to some legislative acts on the issue of capital punishment,” aimed at bringing the country’s laws related to the death penalty into compliance with the Constitution of Kazakhstan, which was amended in 2007.²⁵ The Law introduced changes to the Criminal Code and Criminal Procedure Code of Kazakhstan. According to these changes, capital punishment may only be imposed for terrorist crimes causing death and for severe crimes committed during wartime.

The legislative changes reduced the number of crimes during wartime carrying the death penalty from 18 to eight: genocide; mercenary activity (the participation of a

20 Response to the ODIHR questionnaire on the death penalty from the Permanent Mission of Latvia to the OSCE, 7 July 2008.

21 Information on Latvia in “Amnesty International Report 2009: State of the World’s Human Rights”, Amnesty International, 2009, <<http://thereport.amnesty.org/en/regions/europe-central-asia/latvia>>.

22 Council of Europe, Press release - 660(2008), 25 September 2009, <<https://wcd.coe.int/ViewDoc.jsp?id=1345947&Site=COE>>.

23 Response from the Permanent Mission of Latvia to the OSCE, *op. cit.*, note 20.

24 Constitution of the Republic of Kazakhstan, as amended on 21 May 2007.

25 Response to the ODIHR questionnaire on the death penalty from the Permanent Mission of Kazakhstan to the OSCE, 22 July 2009.

mercenary in a military conflict or military actions that entailed the death[s] of people or other grave consequences); high treason; an attempt upon the life of the President of the Republic of Kazakhstan; sabotage; terrorism; the application of prohibited means and methods of conducting a war; and planning, preparing, starting or waging a war of aggression.²⁶ The sentence for the remaining ten crimes that had previously carried the death penalty was changed to life imprisonment.²⁷

3. *De Facto* Abolitionist States

RUSSIAN FEDERATION

Since the bill “On the Abolition of the Death Penalty in the Russian Federation” was submitted to the State Duma by its Legislation Committee on 20 February 2008²⁸, no further developments related to capital punishment have been reported. At a press conference in Moscow on 11 March 2009, PACE Co-Rapporteur Theodoros Pangalos called on the Russian Federation to abolish the death penalty and questioned arguments made by the Russian authorities that public opinion was not ready for such a move. Russia had imposed a moratorium on the death penalty shortly after it joined the Council of Europe in 1996, but did not move to formally abolish capital punishment within the following three years, as membership in the organization requires.

TAJIKISTAN

Tajikistan has had a temporary moratorium on executions and the handing down of death sentences in place since 15 July 2004. It is believed that approximately 50-60 individuals who have been sentenced to death currently have had their executions stayed as a result of the moratorium.²⁹

26 Response to the ODIHR questionnaire on the death penalty from the OSCE Centre in Astana, 17 July 2009.

27 Ibid. Capital punishment has been replaced by life imprisonment for the following crimes during wartime: murder; an attempt upon the life of a person administering justice or carrying out a preliminary investigation; disobedience or other non-execution of an order; resistance to a superior or coercion of such superior to violate service duties; violent actions toward a superior; desertion; evasion of military service by way of self-mutilation or other method; violation of the rules governing active duty; abuse of power, exceeding competence or inaction; and surrendering or leaving material for waging war to the enemy.

28 “The Death Penalty in the OSCE Area – Background Paper 2008”, *op.cit.*, note 1.

29 Response to the ODIHR questionnaire on the death penalty from the OSCE Office in Tajikistan, 18 August 2009.

On 6 April 2009, the United Nations Human Rights Committee issued its Views on the case of Vyacheslav Dunayev, a Russian national imprisoned in Tajikistan.³⁰ Mr. Dunayev was originally held on death row following sentencing in October 2002. Due to the UN Human Rights Committee's intervention in 2003, the Supreme Court of Tajikistan commuted his sentence in November 2003 to 25 years in prison. In a decision of April 2009, the Committee asked for compensation for Mr. Dunayev and criminal proceedings against those who caused him suffering while in custody. The complainant alleged he had been repeatedly tortured in detention. The Committee further asked for either a retrial with guarantees enshrined in the International Covenant on Civil and Political Rights or Mr. Dunayev's release from prison.

Until recently, only the Administration of the President was responsible for ensuring compliance with decisions of the UN Human Rights Committee. Following the establishment of the Office of the Ombudsman on 27 May 2009, this body was also entrusted with this responsibility.³¹

4. Retentionist States

BELARUS

During the reporting period, government officials have on several occasions publicly spoken in favour of limiting and, potentially, later abolishing the death penalty in the Republic of Belarus. The Prosecutor General of Belarus, for example, said at a press conference on 21 January 2009: "If we are moving towards joining the Council of Europe, we should stick to the rules of this organization."³² In a letter to Amnesty International in November 2008, the Deputy Minister of the Interior also stated that recent legislative changes and the handing down of life sentences as an alternative to the death penalty were evidence of "an irreversible movement towards gradual rejection of the death penalty".³³ The Deputy Chairman of the House of Representatives of the National Assembly of Belarus told a press conference in Strasbourg on 23 June

30 UN Human Rights Committee, Communication No. 1195/2003, CCPR/C/95/D/1195/2003, 6 April 2009.

31 Response from the OSCE Office in Tajikistan, *op.cit.*, note 29.

32 "Grigory Vasilevich: possible abolition of capital punishment as Belarus joins Council of Europe", Belarusian Telegraph Agency, 21 January 2009, <<http://news.belta.by/en/news/politics/?id=324457>>.

33 "Ending Executions in Europe. Towards Abolition of the Death Penalty in Belarus", Amnesty International, p. 14, 26 November 2008, <<http://www.amnesty.org/en/library/asset/EUR49/001/2009/en/d3b9c42d-a356-4dee-ad16-5b05842ba01a/eur490012009en.pdf>>.

2009 that Belarus has been consistently moving towards restricting the imposition of the death penalty.³⁴

On 23 June 2009, the Parliamentary Assembly of the Council of Europe voted to restore the Belarusian Parliament's Special Guest status in the Assembly if and when the Republic of Belarus declared a moratorium on the death penalty.³⁵ Following this development, on 29 June 2009, the Chair of the Parliamentary Commission on National Security of Belarus stated that a working group had been established in the House of Representatives of the National Assembly to draft a proposal for the introduction of a moratorium.³⁶

The human rights community in Belarus has been very active in promoting the abolition of capital punishment. In January 2009, the Belarusian Human Rights House initiated the "Human Rights Activists against Death Penalty" campaign, which also included the preparation by human rights community representatives of a petition to the authorities calling for the abolition of capital punishment. As of 10 March 2009, the petition had been signed by 11 major public figures, including the head of the Belarusian Association of Journalists and a number of authors, musicians, and television and radio hosts, as well as many other private individuals.³⁷

Legal Framework

The Constitution of the Republic of Belarus provides that, until the death penalty is abolished, it may be applied in accordance with the law as an exceptional penalty for particularly serious crimes.³⁸ The Criminal Code provides that the death penalty may be imposed for severe crimes connected with the deliberate deprivation of life with aggravating circumstances.³⁹ The death penalty is envisaged for 12 crimes in peacetime, with an additional two in times of war.⁴⁰

34 Country information on Belarus, Hands Off Cain website, < <http://www.handsoffcain.info/bancadati/schedastato.php?idstato=12000076>>.

35 PACE granted Special Guest status to the Belarus Parliament in 1992. Due to what was cited as a considerable lack of progress in terms of democracy, human rights and the rule of law, this status was suspended in 1997, and Belarus' request for membership of the Council of Europe was frozen the following year.

36 Response to the ODIHR questionnaire on the death penalty from the OSCE Centre in Minsk, 1 July 2009.

37 "Human Rights Defenders against Capital Punishment: first results of the campaign", Viasna website, 10 March 2009, < <http://spring96.org/en/news/27628/>>.

38 Article 24 of the Constitution of the Republic of Belarus, 27 November 1996.

39 Article 59(1) of the Criminal Code, 9 July 1999, amended on 17 July 2006.

40 The death penalty is envisaged for the following crimes: "unleashing or conducting a war of aggression" (Article 122 part 2 of the Criminal Code of Belarus); "murder of a representative of a foreign state or international organization with the intention to provoke international tension or war" (Art. 124 part 2); "international terrorism" (Art. 126); "genocide" (Art. 127); "crimes against humanity" (Art. 128); "premeditated, aggravated murder" (Art. 139 part 2); "terrorism" (Art. 289 part 3); "terrorist acts" (Art. 359); "treason accompanied by murder" (Art. 356 part 2); "conspiracy to seize power" (Art. 357 part 3); "sabotage" (Art. 360 part 2); "murder of a police officer" (Art. 362); "use of weapons of mass destruction" (Art. 134); and "murder of a person in violation of the laws and customs of war" (Art. 135 part 3).

Moratorium

There is no moratorium yet in place on either the imposition or carrying out of death sentences. As mentioned above, a group has recently been established in the Belarus House of Representatives to work on a moratorium. Supreme Court Chairman Valyantsin Sukala told reporters in June 2009 that Belarus' judicial system was ready to introduce a moratorium on the death penalty.⁴¹

Method of execution

The death penalty is carried out in private by means of shooting.⁴²

Statistics*Death sentences*

The Belarusian Government has emphasized on a number of occasions that the imposition of the death penalty has been on the decline in recent years.⁴³ During the reporting period, one individual, Vasil Yazepchuk, was sentenced to death, by the Brest Regional Court on 29 June 2009.⁴⁴ The conviction of Pavel Lenoy, who had been sentenced to death on 20 June 2008, was appealed and became final on 30 September 2008.⁴⁵

Executions

According to official statistics provided by the Supreme Court of Belarus,⁴⁶ two individuals were executed during the reporting period: Nikolai Kaled was sentenced to death on 5 December 2007 by the Minsk Regional Court for murder with aggravating circumstances;⁴⁷ and the above-referenced Mr. Lenoy.⁴⁸ The exact dates of the executions were not made public.

41 "Judiciary said to be ready for death penalty abolition", Viasna Website, 25 June 2009, <<http://spring96.org/en/news/28904/>>.

42 Article 59(1) of the Criminal Code.

43 OSCE Permanent Council meeting No. 771, Statement by the Belarusian Delegation, PC.DEL/656/09, Vienna, 30 July 2009.

44 OSCE Permanent Council Meeting No. 769, Statement of the European Union, PC.DEL/594/09, Vienna, 16 July 2009.

45 Response to the ODIHR questionnaire from the Permanent Delegation of the Republic of Belarus to the OSCE, 6 August 2009.

46 *Ibid.*

47 Article 139 (2) of the Criminal Code.

48 Response from the Permanent Delegation of the Republic of Belarus to the OSCE, Note 45.

Safeguards

Pregnant women and minors

The execution of individuals who were less than 18 years of age at the time the crime was committed or of women is not permitted.⁴⁹ Persons over 65 years of age⁵⁰ can also not be sentenced to death.

Pardon or commutation

The Constitution gives the President the authority to grant clemency by commuting a death sentence to one of life imprisonment.⁵¹ Appeals are initially considered by the Clemency Commission. The case of any individual sentenced to death is automatically considered, regardless of whether the sentenced person has submitted an appeal for clemency.⁵² During the reporting period, no clemencies or commutations were granted.⁵³

UNITED STATES OF AMERICA

Legal Framework

Within the US federal system, the death penalty can be authorized by states, the Federal Government or the US Military. New Mexico became the 16th jurisdiction within the United States⁵⁴ to abolish capital punishment when it did so on 18 March 2009, meaning, to date, that 35 of the 50 states retain the death penalty. In Connecticut, for the first time, both chambers of the General Assembly – the state House of Representatives and the state Senate – voted to abolish the death penalty in May 2009. The Governor, however, vetoed the bill on 5 June 2009, thus putting the abolition of the death penalty in Connecticut on hold for the time being.⁵⁵

The other jurisdictions without the death penalty include Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, New Jersey, New York, Rhode Island, Vermont, West Virginia, Wisconsin and the District of Columbia.⁵⁶

49 Article 59 (1) (2) of the Criminal Code.

50 Article 59 (2) (3) of the Criminal Code.

51 Article 84 (19) of the Constitution.

52 Presidential Decree No. 250 "On confirmation of the regulation on the pardoning procedure in the Republic of Belarus", 3 December 1994.

53 Response from the Permanent Delegation of the Republic of Belarus to the OSCE, *op. cit.*, note 45.

54 Including the District of Columbia.

55 Website of the Connecticut Network to Abolish the Death Penalty, on the page "Recent legislative activity", as of 15 August 2009, <<http://cnadp.org/dpConn.php>>.

56 Response to the ODIHR questionnaire on the death penalty from the United States Mission to the OSCE, 5 August 2009.

Capital punishment is generally only imposed for crimes of murder or felony murder, and generally only when aggravating circumstances were present in the commission of the crime, such as multiple victims, rape of the victim or murder-for-hire.

The Uniform Code of Military Justice (UCMJ) allows for the death penalty as a possible sentence for 15 offences, many of which must occur during time of war. In recent practice, the death penalty has primarily been exercised at the state level; the Federal Government has not executed anyone since 2003. Similarly, under the UCMJ no one has been put to death since 1961.⁵⁷

Moratorium

There is no moratorium on executions in place at the federal level. The last four execution dates at the federal level⁵⁸ were postponed due to issues surrounding lethal injection as the method of execution.⁵⁹ A formal moratorium on executions has been in place in Illinois since 2000. A de facto moratorium on executions exists in California, Delaware and Maryland, due to the aforementioned dispute over lethal injection as the method of execution.⁶⁰ Despite the fact that the Nebraska State Legislature approved a new lethal injection law in 2009, executions also remain halted there because the law is currently being challenged in the courts. Executions also remain effectively halted due to issues over lethal injection in Nevada, North Carolina and Tennessee.

Method of Execution

Authorized methods of execution vary from state to state, although most use lethal injection.

Statistics

Death Sentences

The number of individuals sentenced to death decreased slightly in 2008, as compared to the previous year, following a pattern of decreasing use of capital punishment since 1999. The civilian death row population was 3,297 as of 1 January 2009.⁶¹

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Background note: The United States Supreme Court on 16 April 2008 upheld the use of lethal injection, one of the most widely used execution methods. For seven months prior to the decision, executions across the United States had been postponed as states awaited a ruling from the high court. In a case in Kentucky, death penalty opponents had argued that the three-drug cocktail widely used for lethal injection could cause excruciating pain, in violation of the Constitution's ban on cruel and unusual punishment.

⁶⁰ Response from the United States Mission to the OSCE, *op. cit.*, note 56.

⁶¹ *Ibid.*

Executions

According to official statistics received, 60 persons were executed in the United States between 1 July 2008 and 30 June 2009.⁶² This constitutes almost three times the number of executions for the previous 12 months, which was unusually low as a result of the aforementioned issue surrounding lethal injections.⁶³ Of these executions, 33 were carried out in Texas; five in Alabama; three in each of Florida, Georgia, Ohio, Oklahoma, South Carolina and Virginia; and one in each of Kentucky, Mississippi, Missouri and Tennessee.⁶⁴

International safeguards

The US Constitution, which applies to both state and federal convictions, prohibits the imposition of the death sentence if the offender was under the age of 18 when the capital offense was committed⁶⁵, is mentally retarded⁶⁶, or is legally insane at the time of the scheduled execution⁶⁷.

Fair trial guarantees

On 1 April 2009, the US Supreme Court decided that federally appointed counsel can represent indigent clients in state clemency procedures in capital cases.⁶⁸ The case raised the issue of whether a federal law that provides lawyers for indigent death row inmates at the state level for parts of inmates' appeals guarantees them the continuation of that representation through the state clemency process. The law says that such lawyers are to represent their clients in "all available post-conviction processes", including "proceedings for executive or other clemency". US Supreme Court Justice John Paul Stevens stated that "[i]n authorizing federally funded counsel to represent their state clients in clemency proceedings, Congress ensured that no prisoner would be put to death without meaningful access to the 'fail-safe' of our justice system."

Foreign Nationals

According to official data, as of 19 June 2009, there were 130 foreign nationals, comprising 34 nationalities, under sentence of death in the United States.⁶⁹

62 *Ibid.*

63 "The Death Penalty in the OSCE Area, Background Paper 2008", *op. cit.*, note 1.

64 Response from the United States Mission to the OSCE, *op. cit.*, note 56.

65 See *Roper v. Simmons*, 543 US 551 (2005).

66 See *Atkins v. Virginia*, 536 US 304 (2002).

67 See *Ford v. Wainwright*, 477 US 399 (1986).

68 See *Harbison v. Bell*, 129 S. Ct. 1481 (2009).

69 Response from the United States Mission to the OSCE, *op. cit.*, note 56.

In the case of the Mexican national José Medellín, the State of Texas did not surrender to domestic and international pressure calling on the state to heed the decision of the International Court of Justice in the case of *Avena and Other Mexican Nationals*⁷⁰. The 2004 decision ruled that the United States should provide judicial “review and reconsideration” of convictions and sentences in order to determine whether the defendants had been prejudiced by violations of Article 36(1) of the 1963 Vienna Convention on Consular Relations⁷¹.

The US Secretary of State and Attorney General⁷², the Secretary General of the Council of Europe⁷³ and the UN Secretary General,⁷⁴ among others, called on Texas to respect the decisions and orders of the International Court of Justice. Further, on 16 July 2008, the International Court of Justice issued “provisional measures” in the cases of Mr. Medellín (and four other Mexican nationals) facing execution in Texas. The International Court of Justice ordered the United States “to take all measures necessary” to ensure that these individuals “are not executed unless and until these five Mexican nationals receive review and reconsideration”. Despite these joint efforts, Mr. Medellín was executed on 5 August 2008.

Notwithstanding this development, the US Federal Government continues efforts to implement the *Avena and Other Mexican Nationals* decision.⁷⁵

Pardon or commutation

For federal death row inmates, the President has the power to grant pardon. At the state level, the clemency process varies from state to state, but usually involves the governor, a board of advisors or both. A formal petition for clemency must be filed in all

70 *Avena and Other Mexican Nationals, Mexico v. United States of America*, 31 March 2004.

71 Background note: On 31 March 2004, in a case brought by Mexico, the International Court of Justice (ICJ) ruled that the United States had violated its obligation to inform foreign nationals without delay of their right to have their consulate notified of their detention in 51 cases regarding Mexican nationals. On 28 February 2005, the US President issued a memorandum to the US Attorney General affirming that the United States would comply with the ICJ judgement. As a result, a number of cases have gone before US courts for review and reconsideration of the imposition of the death penalty. The Texas Court of Criminal Appeals held that this presidential determination did not constitute binding federal law and, thus, did not pre-empt the state’s prohibition against the filing of successive habeas petitions. In a decision handed down on 25 March 2008, the United States Supreme Court held that, while the ICJ’s decision constituted an international law obligation on the part of the United States, neither the decision nor the President’s determination constituted binding federal law, enforceable in United States courts, that could pre-empt state limitations on the filing of successive habeas petitions.

72 “Condoleezza Rice asks Perry to stop execution of Jose Medellin”, Texas Death Penalty Blog, 29 July 2008, <<http://texasdeathpenalty.blogspot.com/2008/07/condoleezza-rice-asks-perry-to-stop.html>>.

73 “Execution in Texas: US should end its pick and choose attitude towards international law”, Statement by Council of Europe Secretary General Terry Davis, Strasbourg, 6 August 2009, <<https://wcd.coe.int/ViewDoc.jsp?id=1330555&Site=CM>>.

74 “José Medellín henretter”, Amnesty International Norway, 7 August 2009, <<http://www.amnesty.no/web.nsf/pages/AD43F81669FCC7BBC125749E003D8068>>.

75 Response from the United States Mission to the OSCE, *op. cit.*, note 56.

cases. According to the UCMJ, only the President has the power to commute a death sentence for military personnel to whom the UCMJ applies. Furthermore, no service member can be executed unless the President confirms the death penalty. From the beginning of 2008 through June 2009, five inmates of state prisons have had their death sentences commuted on humanitarian grounds.⁷⁶

⁷⁶ *Ibid.*

Annexes

Annex 1

OSCE Commitments on the Death Penalty

Concluding Document of the 1989 Vienna Follow-up Meeting

Questions relating to security in Europe

(24) With regard to the question of capital punishment, the participating States note that capital punishment has been abolished in a number of them. In participating States where capital punishment has not been abolished, 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 their international commitments. This question will be kept under consideration. In this context, the participating States will co-operate within relevant international organizations.

Document of the 1990 Copenhagen Meeting of the Conference on the Human Dimension of the CSCE

17. The participating States

17.1 recall the commitments undertaken in the Vienna Concluding Document to keep the question of capital punishment under consideration and to co-operate with-in relevant international organizations;

17.2 recall, in this context, the adoption by the General Assembly of the United Nations, on 15 December 1989, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

17.3 note the restrictions and safeguards regarding the use of the death penalty which have been adopted by the international community, in particular Article 6 of the International Covenant on Civil and Political Rights;

17.4 note the provisions of the Sixth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty;

17.5 note recent measures taken by a number of participating States towards the abolition of capital punishment;

17.6 note the activities of several non-governmental organizations on the question of the death penalty;

17.7 will exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration;

17.8 will make available to the public information regarding the use of the death penalty.

**Document of the 1991 Moscow Meeting of the Conference
on the Human Dimension of the CSCE**

(36) The participating States recall their commitment in the Vienna Concluding Document to keep the question of capital punishment under consideration and reaffirm their undertakings in the Document of the Copenhagen Meeting to exchange information on the question of the abolition of the death penalty and to make available to the public information regarding the use of the death penalty.

(36.1) They note

- (i) that the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty entered into force on 11 July 1991;
- (ii) that a number of participating States have recently taken steps towards the abolition of capital punishment;
- (iii) the activities of several non-governmental organizations concerning the question of the death penalty.

Concluding Document of the 1992 Helsinki Summit

The participating States

(58) Confirm their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment.

Concluding Document of the 1994 Budapest Summit

Capital Punishment

19. The participating States reconfirm their commitments in the Copenhagen and Moscow Documents concerning the question of capital punishment.

Annex 2

OTHER INTERNATIONAL STANDARDS ON THE DEATH PENALTY

UNITED NATIONS

Extract from the International Covenant on Civil and Political Rights

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

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

Article 1

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

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

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

Article 4

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.
2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

Article 7

1. The present Protocol is open for signature by any State that has signed the Covenant.
2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 9

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 10

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

- (a) Reservations, communications and notifications under article 2 of the present Protocol;
- (b) Statements made under articles 4 or 5 of the present Protocol;
- (c) Signatures, ratifications and accessions under article 7 of the present Protocol;
- (d) The date of the entry into force of the present Protocol under article 8 thereof.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

Extract from the Convention on the Rights of the Child

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

Economic and Social Council: 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 the 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 judgement 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 become 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.
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.

**Moratorium on the use of the death penalty,
UN General Assembly Resolution 62/149, 18 December 2007⁷⁷**

The General Assembly,

Guided by the purposes and principles contained in the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

Recalling also the resolutions on the question of the death penalty adopted over the past decade by the Commission on Human Rights in all consecutive sessions, the last being its resolution 2005/59, in which the Commission called upon States that still

⁷⁷ . Another resolution was adopted by the UN General Assembly one year later, on 18 December 2008, on the implementation of the 2007 General Assembly resolution 62/149, UN Doc. A/63/430/Add.2, draft res. I., 18 December 2008.

maintain the death penalty to abolish it completely and, in the meantime, to establish a moratorium on executions,

Recalling further the important results accomplished by the former Commission on Human Rights on the question of the death penalty, and envisaging that the Human Rights Council could continue to work on this issue,

Considering that the use of the death penalty undermines human dignity, and convinced that a moratorium on the use of the death penalty contributes to the enhancement and progressive development of human rights, that there is no conclusive evidence of the death penalty's deterrent value and that any miscarriage or failure of justice in the death penalty's implementation is irreversible and irreparable,

Welcoming the decisions taken by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty,

1. *Expresses its deep concern* about the continued application of the death penalty;
2. *Calls upon* all States that still maintain the death penalty to:
 - (a) Respect international standards that provide safeguards guaranteeing the protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984;
 - (b) Provide the Secretary-General with information relating to the use of capital punishment and the observance of the safeguards guaranteeing the protection of the rights of those facing the death penalty;
 - (c) Progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed;
 - (d) Establish a moratorium on executions with a view to abolishing the death penalty;
3. *Calls upon* States which have abolished the death penalty not to reintroduce it;
4. *Requests* the Secretary-General to report to the General Assembly at its sixty-third session on the implementation of the present resolution;
5. *Decides* to continue consideration of the matter at its sixty-third session under the same agenda item.

COUNCIL OF EUROPE

Extract from the European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 – Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5 – Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratifi-

cation, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

Article 6 – Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 7 – Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8 – Entry into force

1. This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

Article 9 – Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;

- c. any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- d. any other act, notification or communication relating to this Protocol.

**Protocol No. 13 to the Convention for the Protection of Human Rights
and Fundamental Freedoms, Concerning the Abolition of the Death Penalty
in All Circumstances**

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 4 – Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 5 – Relationship to the Convention

As between the States Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 6 – Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 7 – Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 8 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- d. any other act, notification or communication relating to this Protocol.

EUROPEAN UNION

Extract from the Charter of the Fundamental Rights of the European Union

Article 2

Right to Life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

**Extract from EU Guidelines on the Death Penalty:
revised and updated version, 2008**

III. Minimum standards paper

Where states insist on maintaining the death penalty, the EU considers it important that the following minimum standards should be met:

- i) 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. The death penalty should not be imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence.
- ii) Capital punishment may be imposed only for a crime for which the death penalty was prescribed 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.
- iii) Capital punishment may not be imposed on:
 - persons below 18 years of age at the time of the commission of their crime;
 - pregnant women or new mothers;
 - persons who have become insane.
- iv) Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for alternative explanation of the facts.
- v) Capital punishment must only be carried out pursuant to a final judgement rendered by an independent and impartial competent court after legal proceedings, including those before special tribunals or jurisdictions, 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, and where appropriate, the right to contact a consular representative.
- vi) Anyone sentenced to death shall have an effective right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals become mandatory.

- vii) Where applicable, anyone sentenced to death shall have the right to submit an Individual complaint under International procedures; the death sentence will not be carried out while the complaint remains under consideration under those procedures; the death penalty will not be carried out as long as any related legal or formal procedure, at the international or at the national level, is pending.
- viii) 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 of capital punishment. ix) Capital punishment may not be carried out in contravention of a state's international commitments.
- x) The length of time spent after having been sentenced to death may also be a factor.

Extract from European Parliament resolution of 1 February 2007 on the initiative in favour of a universal moratorium on the death penalty

The European Parliament ,

...

1. Reiterates its long-standing position against the death penalty in all cases and under all circumstances and expresses once more its conviction that the abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights;
2. Calls for a worldwide moratorium on executions to be established immediately and unconditionally with a view to the worldwide abolition of the death penalty, through a relevant resolution of the current UN General Assembly, whose actual implementation the UN Secretary-General should be able to monitor.

Annex 3

RELEVANT RECOMMENDATIONS MADE AT THE OSCE HUMAN DIMENSION IMPLEMENTATION MEETING IN 2008

During the 2008 OSCE Human Dimension Implementation Meeting, held in Warsaw from 29 September to 10 October 2008, views were also exchanged on the question of the abolition of the death penalty.⁷⁸ *Working Session 4: Rule of law II* addressed the issues of capital punishment, prevention of torture and the protection of human rights in fighting terrorism. The majority of interventions focused on the death penalty and the prevention of torture.

Regarding capital punishment, it was acknowledged that the death penalty was considered unacceptable by the large majority of participating States, given the various problems it implies, such as the risk of judicial error, a lack of sufficient legal assistance for suspects in many cases and false confessions. Generally, there was a trend towards abolition of the death penalty in the OSCE area. However, it was still in force in a larger number of states worldwide, including two OSCE participating States. Some states that have not yet abolished the death penalty do not, consequently, support the call for a moratorium.

The following oral and written recommendations were made on the abolition of capital punishment:

- The death penalty should be abolished;
- Those OSCE participating States that have not yet abolished capital punishment should introduce a complete and unlimited moratorium on executions;
- OSCE institutions should continue to monitor the situation in those participating States that have not yet fully abolished the death penalty and to elaborate recommendations for measures/programmes leading to complete abolition;
- The publication “The Death Penalty in the OSCE Area” shall continue to be distributed, including in Russian translation.

78 “Human Dimension Implementation Meeting Consolidated Summary”, OSCE Office for Democratic Institutions and Human Rights, 29 September-10 October 2008.

Annex 4

QUESTIONNAIRE ON THE DEATH PENALTY SENT OUT BY ODIHR IN JUNE 2009

1. Please inform us of any developments with regard to the death penalty in your country since 1 July 2008.

LEGAL FRAMEWORK

2. The attached paper is a copy of the entry related to your country in the publication of 2008. It should list all crimes that carry the death penalty. Please check this list and inform us if any corrections or changes are required.
3. Has the number of crimes that carry the death penalty increased or decreased since the last publication?
4. Do any crimes under your country's Code of Military Law carry the death penalty? Have there been any changes since the last publication?
5. Have any steps been taken to introduce, retain, or remove a moratorium on executions? If yes, please provide details and the legal basis for those changes and please attach copies of relevant legislation or presidential decrees.
6. If a moratorium is in place, have there been any changes since last year's publication in the specific procedure regulating the treatment and rights of persons subjected to the moratorium? If yes, please attach copies of relevant legislation or presidential decrees.
7. If a moratorium is in place, please list the name and place of detention of all persons currently subjected to the moratorium.

STATISTICS

8. Please provide us with statistics on the number of persons who have been sentenced to death in the period from 1 July 2008 to 30 June 2009.
9. Please provide us with the full name and age of persons who have been sentenced to death in the period from 1 July 2008 to 30 June 2009.

10. Please indicate the specific crime for which each of these persons was sentenced.
11. Please list which of these sentences has entered into force (i.e., all appeal stages have been exhausted).
12. Please list which court passed each of the sentences.
13. Please indicate if any of the persons sentenced to death in the period from 1 July 2008 to 30 June 2009 were:
 - Under the age of 18 at the time the crime was committed;
 - Pregnant women or women with dependent infants;
 - Diagnosed as having any form of mental disorder;
 - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
14. If there have been changes since the last year's publication, please detail the regulations in place regarding the treatment of persons on death row and attach copies of the relevant legislation and regulations.
15. Please provide us with the full name and age of persons who have been executed in the period from 1 July 2008 to 30 June 2009. Please also indicate the specific crime for which each of these persons was executed.
16. Please indicate if any of the persons executed in the period from 1 July 2008 to 30 June 2009 were:
 - Under the age of 18 at the time the crime was committed.
 - Pregnant women or women with dependent infants.
 - Diagnosed as having any form of mental disorder.
 - Non-nationals. Please indicate whether or not each of these persons received consular assistance.
17. Which state body is responsible for keeping statistics on sentences, executions and commutations?
18. Please provide us with the full name and age of any persons sentenced to death who have been granted clemency or had their sentence commuted since 1 July 2008.

SAFEGUARDS

19. Please describe if there have been any changes in the procedure for informing all non-nationals who have been accused of committing a crime, for which the death penalty is a potential sentence, of their right to receive consular assistance. Is this procedure mandatory?
20. Please list all cases regarding the use of the death penalty that have been decided since the last publication, or are currently ongoing, before international bodies (e.g., UN Human Rights Committee, International Court of Justice, European Court of Human Rights).
21. What system is in place to ensure that interim stays by the UN Human Rights Committee are complied with and transmitted to all the relevant actors at the national level? Have there been any changes in this system since last year's publication?
22. Please list the names of any persons who have been executed while a procedure regarding their case was ongoing before an international body.
23. If there have been changes since last year's publication, please describe the procedural process of considering a request for clemency, including the factors that are taken into account when considering such a request.
24. If there have been changes since last year's publication, please indicate the procedure for informing relatives of the date of execution and the date that the execution has been carried out, as well as of the place of burial of executed persons.

MISCELLANEOUS

25. Please indicate ways in which you have co-operated with other intergovernmental organizations on this issue in the period from 1 July 2008 to 30 June 2009.

Annex 5

Status of Ratifications of Relevant Treaties

Status of Ratifications as of: 11 August 2009

| Participating State | Status | ICCPR | 2nd Optional Protocol | ECHR | Protocol No. 6 | Protocol No. 13 |
|------------------------|--------|-------|-----------------------------|------|-------------------|--------------------|
| Albania | A | r | r | r | r | r |
| Andorra | A | r | r | r | r | r |
| Armenia | A | r | | r | r | s |
| Austria | A | r | r | r | r | r |
| Azerbaijan | A | r | r | r | r | |
| Belarus | R | r | | n/a | n/a | n/a |
| Belgium | A | r | r | r | r | r |
| Bosnia and Herzegovina | A | r | r | r | r | r |
| Bulgaria | A | r | r | r | r | r |
| Canada | A | r | r | n/a | n/a | n/a |
| Croatia | A | r | r | r | r | r |
| Cyprus | A | r | r | r | r | r |
| Czech Republic | A | r | r | r | r | r |
| Denmark | A | r | r | r | r | r |
| Estonia | A | r | r | r | r | r |
| Finland | A | r | r | r | r | r |
| France | A | r | r | r | r | r |
| Georgia | A | r | r | r | r | r |
| Germany | A | r | r | r | r | r |
| Greece | A | r | r | r | r | r |
| Holy See | A | | | n/a | n/a | n/a |
| Hungary | A | r | r | r | r | r |
| Iceland | A | r | r | r | r | r |
| Ireland | A | r | r | r | r | r |
| Italy | A | r | r | r | r | r |
| Kazakhstan | PA | r | | n/a | n/a | n/a |
| Kyrgyzstan | A | r | | n/a | n/a | n/a |
| Latvia | PA | r | | r | r | s |

| Participating State | Status | ICCPR | 2nd Optional Protocol | ECHR | Protocol No. 6 | Protocol No. 13 |
|--|--------|-------|-----------------------------|------|-------------------|--------------------|
| Liechtenstein | A | r | r | r | r | r |
| Lithuania | A | r | r | r | r | r |
| Luxembourg | A | r | r | r | r | r |
| Malta | A | r | r | r | r | r |
| Moldova | A | r | r | r | r | r |
| Monaco | A | r | r | r | r | r |
| Montenegro | A | r | r | r | r | r |
| Netherlands | A | r | r | r | r | r |
| Norway | A | r | r | r | r | r |
| Poland | A | r | s | r | r | s |
| Portugal | A | r | r | r | r | r |
| Romania | A | r | r | r | r | r |
| Russian Federation | DA | r | | r | s | |
| San Marino | A | r | r | r | r | r |
| Serbia | A | r | r | r | r | r |
| Slovak Republic | A | r | r | r | r | r |
| Slovenia | A | r | r | r | r | r |
| Spain | A | r | r | r | r | s |
| Sweden | A | r | r | r | r | r |
| Switzerland | A | r | r | r | r | r |
| Tajikistan | DA | r | | n/a | n/a | n/a |
| Turkey | A | r | r | r | r | r |
| Turkmenistan | A | r | r | n/a | n/a | n/a |
| Ukraine | A | r | r | r | r | r |
| United Kingdom | A | r | r | r | r | r |
| United States of America | R | r | | n/a | n/a | n/a |
| Uzbekistan | A | r | r | n/a | n/a | n/a |
| Former Yugoslav Republic of Macedonia | A | r | r | r | r | r |

Notes:

r = ratification or accession

s = signature only

n/a = non-applicable

A = abolitionist

DA = *de facto* abolitionist

PA = partly abolitionist

R = retentionist

in bold = developments since last reporting

