

EUROPEAN UNION

EU Policy Towards Third Countries on the Death Penalty

General Affairs Council - Luxembourg, 29 June 1998

I. Introduction

(i) The United Nations, inter alia in the ICCPR, the CRC and in the ECOSOC Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, has established strict conditions only under which the death penalty may be used. The Second Optional Protocol to the ICCPR provides for states to commit themselves to permanent abolition of the death penalty. The European Union has now moved beyond this and now espouses abolition for itself and others.

(ii) At its 53rd session, and at its 54th session in a resolution sponsored by all EU countries, the UN Commission on Human Rights called on countries which maintained the death penalty:

- progressively to restrict the number of offences for which it may be imposed;
- to establish a moratorium on executions with a view to completely abolishing the death penalty.

(iii) At the October 1997 Council of Europe Summit, Heads of Government, including all EU member states, called for universal abolition of the death penalty. Moreover, new member states of the Council of Europe have committed themselves to moratoria and to ratify the 6th Protocol of the ECHR committing them to permanent abolition.

(iv) The 1997 Amsterdam Treaty of the European Union noted that since the signature of the 6th Protocol to the European Convention on Human Rights, the death penalty had been abolished in a majority of EU member states, and had not been used in any of them.

(v) In the OSCE, participating States are committed under the Copenhagen document to exchange information on the abolition of the death penalty and to make this available to the public. The EU fulfils this by regular statements within the OSCE's Human Dimension framework.

(vi) The statutes of the International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda, both of which the EU supported, contain no provision for the death penalty, notwithstanding the fact that they were set up to deal with mass violations of humanitarian law including genocide.

II. Operational paper

The EU considers that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights. The objectives of the European Union are:

- to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states;

- where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards as set out in the attached paper. The EU will make these objectives known as an integral part of its human rights policy. The European Union will intensify its initiatives, including declarations or demarches on the death penalty, in international fora and towards other countries, in the light of the attached Minimum Standards Paper.

The European Union will consider, case by case, and on the basis of the criteria, whether to make demarches to other countries over the use of the death penalty.

The main elements of the EU approach will be as follows:

General Demarches

Where relevant, the European Union will raise the issue of the death penalty in its dialogue with third countries. Elements in these contacts will include:

- The EU's call for universal abolition of the death penalty, or at least for a moratorium.
- Where its use is maintained, the EU will emphasise that states should only use the death penalty in line with the minimum standards as set out in the attached paper, and they should maintain maximum transparency over its use.

The precise nature of such approaches will take into consideration, *inter alia*:

- Whether the country has a properly functioning and open judicial system;
- Whether the country has made international undertakings not to use the death penalty, e.g. in connection with regional organisations and instruments;
- Whether the legal system of the country, and its use of the death penalty, is closed to public and international scrutiny, and whether there are indications that the death penalty is widely used in contravention of minimum standards.

Particular consideration will be given to making EU demarches on the use of the death penalty at times at which a country's policy on the death penalty is in flux, e.g. where an official or de facto moratorium on the death penalty is to be ended, or where the death penalty is to be reintroduced through legislation.

Particular consideration will be given to reports and findings by relevant international human rights mechanisms.

A demarche or public statement may be made where countries take steps towards abolition of the death penalty.

Individual Cases

In addition, where the European Union becomes aware of individual death penalty cases which violate minimum standards, the EU will consider making specific demarches. Speed will often be essential in these cases. Member states proposing such demarches should therefore provide as much background as possible drawing on all available sources.

This should include brief details of the alleged crime, criminal proceedings, the precise nature of the violation of the minimum standards, the status of any appeal and, if known, the expected date of execution. Where there is sufficient time consideration should be given to seeking, from Heads of Mission, detailed information and advice on the case prior to demarches being made.

Human Rights Reporting

EU Heads of Mission should, as a matter of course, include an analysis of the use of the death penalty in their human rights reports as well as including periodic evaluation of the effect and impact of EU approaches.

Possible Results of EU Interventions: Other Initiatives

The EU's objective, where possible, is to persuade third countries to abolish the death penalty. To this end, the EU will encourage countries to consider acceding to the Second Optional Protocol to the ICCPR and comparable regional instruments. Additionally, where this is not possible, the EU will nevertheless maintain abolition as an objective, and will:

- Encourage states to ratify and comply with international human rights instruments, especially those relating to the use of the death penalty, including the ICCPR;
- Raise the issue in multilateral fora and work towards moratoria on the use of the death penalty and, in due course, abolition;
- Encourage relevant international organisations to take appropriate steps to encourage states to ratify and comply with international standards relating to the death penalty;
- Encourage and offer bilateral and multilateral cooperation, *inter alia* in collaboration with civil society, including in the legal field with the aim of establishing a fair and impartial judicial process for criminal cases.

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 financial crimes or for non-violent religious practice or expression of conscience.

(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 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, 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.

(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.

(xi) Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering. It may not be carried out in public or in any other degrading manner.

(xii) The death penalty should not be imposed as an act of political revenge in contravention of the minimum standards, e.g. against coup plotters.