



Declassified*
AS/Jur (2018) 44
11 October 2018
ajdoc44 2018

Committee on Legal Affairs and Human Rights

Abolition of the death penalty in Council of Europe member and observer states,¹ Belarus and countries whose parliaments have co-operation status² – situation report

Revised information note

General rapporteur: Mr Yves CRUCHTEN, Luxembourg, Socialist Group

1. Introduction

1. Having been appointed general rapporteur on the abolition of the death penalty at the Committee meeting of 13 December 2016, I have had the honour to continue the outstanding work done by Ms Meritxell Mateu Pi (Andorra, ALDE), Ms Marietta Karamanli (France, SOC), Ms Marina Schuster (Germany, ALDE), and, before her, Ms Renate Wohlwend (Liechtenstein, EPP/CD).³

2. This document updates my previous information note with regard to the development of the situation since October 2017 and the exchange of views with Ms Rose Vines, Ministry Against the Death Penalty, United States, at the meeting in Strasbourg on 10 October 2017.

3. This note will first of all provide a brief overview of the international and European legal framework, and then highlight the current situation in states that have abolished the death penalty only for ordinary crimes, those that provide for the death penalty in their legislation but do not implement it and those that actually do apply it. It refers solely to Council of Europe member states (the Russian Federation), observer states (United States, Japan and Israel), states whose parliaments hold “partner for democracy” status, Kazakhstan⁴ and Belarus, a country which would like to have closer links with the Council of Europe. Since March 2012, the Parliamentary Assembly’s general rapporteurs have issued public statements relating to executions and death sentences in these states or have proposed that the Committee adopt statements condemning capital punishment as inhuman and degrading. It is an honour for me to continue this work. Accordingly, since I took up my remit, and especially in recent months, I have issued several statements condemning the executions that have taken place in the United States, Japan, Belarus and the Gaza Strip (Palestinian Authority).

2. The international and European legal framework and states’ practice

* Document declassified by the Committee on 10 October 2018.

¹ Including Israel, whose parliament (the Knesset) has observer status.

² Both the “partners for democracy” (the parliaments of Jordan, Morocco, Kyrgyzstan and the Palestinian National Council) and Kazakhstan (with co-operation status on the basis of a co-operation agreement signed in 2004).

³ See also her report on “The death penalty in Council of Europe member and observer states: a violation of human rights”, [Doc 12456](#), and Assembly Resolution 1807 (2011) on this subject, adopted on 14 April 2011.

⁴ Kazakhstan is in particular a party to several Council of Europe conventions and its parliament signed a co-operation agreement with the Assembly in 2004. For more details on its co-operation with the Council of Europe, see Assembly Resolution 2193 (2017) on the relations of the Council of Europe with Kazakhstan, adopted by the Standing Committee on 24 November 2017.

4. In international law, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) expressly states that “(e)very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” In paragraph 2, it refers to the requirements to comply with the law of treaties and to observe the procedural guarantees for executions in non-abolitionist states, which may only impose a death sentence “for the most serious crimes”. This penalty “can only be carried out pursuant to a final judgement rendered by a competent court”. The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, provides for the abolition of the death penalty in all circumstances, even for the most serious crimes or in wartime.⁵ However, two Council of Europe member states (Armenia and the Russian Federation) have not ratified this protocol.⁶ Moreover, Article 37(a) of the [International Convention on the Rights of the Child](#) prohibits capital punishment for persons under 18 years of age. The international community has also adopted numerous instruments that prohibit the use of the death penalty, but these are not binding.⁷ For example, according to some resolutions of the UN Economic and Social Council, a pregnant woman, a mother of a young child or a disabled or mentally ill person must not be executed either.⁸

5. At the regional level, the European framework provides more protection. At the Council of Europe, in addition to the right to life guaranteed by Article 2 of the European Convention on Human Rights (“the Convention”), Protocol No. 6 to the Convention, which was signed on 28 April 1983 and came into force on 1 March 1985, abolishes the death penalty in peacetime. It has been ratified by 46 member States (the Russian Federation has only signed it).⁹ Protocol No. 13, which was signed on 3 May 2002 and came into force on 1 July 2003, abolishes the death penalty in all circumstances. The latter has been signed and ratified by forty-four member states. Azerbaijan and the Russian Federation have not yet signed it, whereas Armenia has signed but not ratified it.¹⁰ Even though the death penalty is not entirely prohibited in the light of Article 2 of the Convention, developments in the case law of the European Court of Human Rights (“the Court”), particularly with regard to Article 3, which prohibits torture and inhuman or degrading treatment or punishment, show that the explicit recognition of this penalty has become virtually obsolete. Accordingly, in the Court’s view, the obligations of the States Parties to the Convention and its protocols also prohibit the extradition or expulsion of individuals to countries where they face the death penalty. Such extradition or expulsion would then constitute a violation of Article 3. It will be recalled that in the *Soering v. the United Kingdom*¹¹ judgment of 1989, the Court found a violation because of the UK authorities’ intention to send the applicant to the United States where there was a risk that he would spend several years on “death row”, pending his execution. In the 2005 *Öcalan v. Turkey* judgment,¹² the Court concluded that the application of the death penalty delivered following an unfair trial would be in breach of Article 3 of the Convention and held that the use of the death penalty in peacetime was unacceptable. In the *Al-Saadoon and Mufdhi v. the United Kingdom*¹³ judgment of 2010, in the light of the progress made regarding abolition of the death penalty, the Court concluded for the first time that the death penalty was inhuman or degrading treatment irrespective of the circumstances in which it was delivered or applied (violation of Article 3). Furthermore, the Court found against Poland on 24 July 2014¹⁴ for having transferred an alleged terrorist – Mr Al Nashiri – to the United States despite the risk that he could be sentenced to death. The Court found in particular that there had been a violation of Articles 2 and 3 of the Convention in conjunction with Article 1 of Protocol No. 6. In connection with the supervision of the execution of this judgment, the Committee of Ministers urged Poland to ensure that such a sentence was not imposed on him in the United States.¹⁵ In May 2018, the Court delivered a similar judgment in *Al Nashiri v. Romania*.¹⁶

⁵ Adopted and proclaimed by the UN General Assembly in resolution 44/128 of 15 December 1989.

⁶ As at 20 September 2018: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&clang=en

⁷ Universal Declaration of Human Rights of 1948 and six resolutions of the UN General Assembly: resolution 62/149 (December 2007), resolution 63/168 (December 2008), resolution 65/206 (December 2010), resolution 67/176 (December 2012), resolution 69/186 (December 2014) and resolution 71/187 (2016).

⁸ Resolution 1984/50: Safeguards guaranteeing the protection of the rights of those facing the death penalty, 25 May 1984 – UN Economic and Social Council. Resolution 1989/64: implementation of the safeguards guaranteeing the protection of the rights of those facing the death penalty – UN Economic and Social Council.

⁹ As at 20 September 2018. ETS No. 114; https://www.coe.int/en/web/conventions/search-on-treaties/-conventions/treaty/114/signatures?p_auth=73pM5mY5.

¹⁰ As at 20 September 2018. ETS No. 187; https://www.coe.int/en/web/conventions/search-on-treaties/-conventions/treaty/187/signatures?p_auth=73pM5mY5.

¹¹ Judgment of 7 July 1989, Application No. 14038/88.

¹² Judgment of 12 May 2005, Application No. 46221/99.

¹³ Judgment of 2 March 2010, Application No. 61498/08.

¹⁴ *Al Nashiri v. Poland*, judgment of 24 July 2014, Application No. 28761/11.

¹⁵ See the [decision](#) of the Committee of Ministers at their 1294th meeting (DH) (19-21 September 2017), and the report by our Committee colleague, Mr Pierre-Yves Le Borgn’ (France, SOC), on “The implementation of judgments of the European Court of Human Rights”, which discusses this question in detail, [Doc. 14340](#), paragraph 33.

¹⁶ *Al Nashiri v. Romania*, judgment of 31 May 2018 (not final), Application No. 33234/12.

6. According to the World Coalition Against the Death Penalty,¹⁷ there are currently 107 countries that have completely abolished the death penalty. These include virtually all the Council of Europe member States, Canada, Mexico and Kyrgyzstan. Seven states have abolished the death penalty for ordinary crimes only, including Israel and Kazakhstan. Twenty-eight provide for the death penalty in their legislation but do not implement it. This is, in particular, the case in Morocco and the Russian Federation. This means that, in all, 142 states, i.e. more than two thirds of the whole world, have abolished the penalty in law or in practice. Lastly, there are 56 states that carry it out, including the US, Japan, Belarus and the Palestinian Authority. Between January 2017 and September 2018, three countries (Mongolia, Guinea and Burkina Faso) abolished the death penalty for all crimes and one country (Guatemala) abolished it for ordinary crimes only. Twenty-three states executed convicted persons in 2017 (the same number as in 2016). The largest number of executions took place, in descending order, in China, Iran, Iraq, Pakistan and Saudi Arabia.¹⁸ According to the Amnesty International report, "[Death sentences and Executions 2017](#)",¹⁹ published on 12 April 2018, there has been an overall decrease in states resorting to this punishment, with a 4% fall in the number of executions compared with 2016 (in 2017, at least 993 persons were executed, whereas the figure for 2016 was at least 1 032). This number of executions is a 39% drop compared with 2015, the year in which the organisation recorded the highest number of executions since 1989 (a total of 1 634). This fall brings the number of executions down to the average figures recorded before the peak in 2015. It should be noted that these figures do not include all the executions carried out in China, where data on the use of the death penalty remain classified as a state secret.²⁰ The methods of execution used include beheading, hanging, firing squad and lethal injections. Public executions were carried out in Iran (at least 31). Also in Iran, at least five people were executed for crimes committed when they were under 18 years of age.²¹ In the United States and Japan, a number of persons with a mental or intellectual disability were either executed or under sentence of death.²² It should also be noted that in 2017 Amnesty International recorded at least 2 591 death sentences in 53 countries, a fall of 17% compared with 2016 (3 117 death sentences in 55 countries).²³ At the end of 2017, at least 21 919 people were under sentence of death.²⁴

3. The situation country by country

3.1. Russian Federation

7. As a new Council of Europe member state, the Russian Federation first signed Protocol No. 6 in April 1997. However, the Russian parliament has not yet ratified it. In 2008, the Russian Federation voted for the UN resolution for a global moratorium on executions. There have been no executions in the country since 1999. The Russian Constitutional Court has played an active part in the de facto abolition of the death penalty in the Russian Federation. First of all, it prohibited death sentences until jury trials were established throughout the country. In autumn 2009, the Supreme Court asked the Constitutional Court if the introduction of a jury system by Chechnya²⁵ planned for 1 January 2010 meant the end of the moratorium and would therefore enable the resumption of death sentences.²⁶ Subsequently, on 19 November that year, the Constitutional Court decided to extend the moratorium indefinitely on the ground that it was a process that reflected "a trend in international law and was in accordance with the commitments entered into by the Russian Federation". Following that decision, 697 death sentences were commuted to life imprisonment.²⁷

8. A moratorium is a means of encouraging the permanent abolition of the death penalty. It provides a platform for de jure abolition but it may be dangerous to prolong it indefinitely since executions may be resumed. For example, in 2009 Thailand restarted executions after a six-year moratorium, as did Taiwan, which began executing people again after a five-year moratorium.²⁸ As in many other countries (including Turkey recently) the debate on restoring the death penalty occasionally flares up in the Russian Federation. After the March 2010 attacks on the Moscow metro, the Federation Council's Judicial and Legal Affairs

¹⁷ As at 20 September 2018, see <http://www.worldcoalition.org/worldday.html>.

¹⁸ <https://www.amnesty.org/en/what-we-do/death-penalty/>.

¹⁹ Amnesty International, [Death sentences and executions in 2017](#), 12 April 2018.

²⁰ See page 6 of the report.

²¹ In South Sudan, too, two people under 18 at the time they committed the crimes were executed.

²² Supra note 19, pages 7 to 9. This also happened in the Maldives, Pakistan and Singapore.

²³ Ibid, page 7.

²⁴ Ibid.

²⁵ The last Russian republic without a system of jury trials.

²⁶ "[La Russie s'éloigne de la peine de mort](#)", *Le Monde*, 19 November 2009.

²⁷ Amnesty International, [Death sentences and executions in 2010](#), 28 March 2011, Index: ACT50/001/2011, p. 25.

²⁸ [Death Penalty Information Pack](#), Penal Reform International, p. 15.

Committee began working on a draft law to reintroduce the death penalty for organisers of terrorist attacks that result in multiple loss of life.²⁹ In March 2016 and June 2017, the question of applying the death penalty, particularly for terrorists, was once again raised by certain members of parliament³⁰ and a bill to reintroduce the death penalty was tabled by some members of the Duma. In November 2017, Ramzani Kadyrov, the President of the Republic of Chechnya, also called for the restoration of the death penalty for terrorist offences.³¹ Recently, a Russian MP proposed restoring it in cases of meddling in election campaigns.³² However, a spokesman for the president and the Russian ombudsman stated that the government did not envisage suspending the moratorium on capital punishment.³³ I wish to repeat my recommendations and reiterate that it is very important for the Russian Federation to abolish the death penalty *de jure* by ratifying Protocol No. 6 to the Convention and/or signing and ratifying Protocol No. 13 in particular.

3.2. United States

9. The United States ratified the International Covenant on Civil and Political Rights on 8 June 1992, making a reservation to Article 6, which enshrines the right to life, but it has not acceded to the Second Optional Protocol, aiming at the abolition of the death penalty. The United States has had Council of Europe observer status since 1996. Of the 50 US federal states, 19 have abolished the death penalty (seven of these since 2007)³⁴ and four³⁵ have declared moratoriums on executions. Delaware is the latest state to have abolished capital punishment (in August 2016). Unfortunately, attempts by the Nebraska legislature to abolish the death penalty, welcomed by the former Assembly rapporteur, Ms Karamanli,³⁶ failed, following a November 2016 vote by the electorate in that state to maintain the penalty. Similarly, in June 2018 the governor of New Hampshire vetoed a death penalty abolition bill.³⁷ According to the Amnesty International report for 2017, of the 31 non-abolitionist states, 11 have not carried out an execution for ten years.³⁸ Again according to Amnesty International, at the end of 2017 a total of 2 724 people were under sentence of death (most of them in California, Florida, Texas, Alabama and Pennsylvania). 2017 was the ninth consecutive year in which the United States was the only country on the American continent to have executed prisoners. All the same, although the number of executions and death sentences recorded there in 2017 rose slightly compared with 2016, the country remained within the historically low trends of recent years. For the second year in a row, and the second time since 2006, it did not feature among the top five global executioners, with its position in the global ranking dropping from 7th to 8th.³⁹ In 2014, 35 people were executed,⁴⁰ in 2015 – 28,⁴¹ in 2016 – 20 and in 2017 – 23.⁴² In 2018, 18 executions have already been carried out, ten in Texas, two in Georgia, two in Alabama, one in Florida, one in Ohio (where the governor nevertheless pardoned a number of sentenced prisoners), one in Tennessee and one in Nebraska.⁴³ The number of death sentences also rose slightly compared with 2016: in 2014, at least 72 were handed down, followed by 52 in 2015, 32 in 2016 and 41 in 2017. According to Amnesty International, the decreases can be partly explained by the legal challenges that resulted in the revision of lethal injection protocols or problems faced by states in obtaining substances used in lethal injection procedures.⁴⁴ Amnesty also points out that in Florida several executions and trials likely to end in death sentences were put on hold for a time in 2016 following a US Supreme Court judgment declaring unconstitutional the jury's merely advisory role in death sentencing (*Hurst v. Florida*).⁴⁵ However, after changes to the law, executions in Florida were resumed in August 2017.⁴⁶ Executions are

²⁹ Kester Kenn Klomegah, [Death Penalty Lingers in Former Soviet Republics](#), IPS News, 5 April 2010.

³⁰ *Stay of execution? Russian MP proposes 'delayed death penalty' for convicted terrorists*, article in 'Rossiyskaya gazeta', 13 June 2017.

³¹ RT, "Kadyrov proposes death penalty for terrorist recruiters", 16 November 2017, www.rt.com/politics/410062-kadyrov-backs-tougher-punishment-for/.

³² Moscow Times, [Russian Deputy Proposes Death Penalty for Foreigners Guilty of Election Meddling](#), 5 March 2018.

³³ Tass, "Kremlin does not discuss cancellation of freeze on capital punishment", 15 June 2017, www.tass.com/politics/951633; RT/Russia, "Death penalty moratorium will never be lifted – Russian ombudsman", 1 December 2017.

³⁴ See <https://deathpenaltyinfo.org/states-and-without-death-penalty> (as at 9 November 2016).

³⁵ Colorado, Oregon, Pennsylvania and Washington.

³⁶ See <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5626&lang=2&cat=>

³⁷ Amnesty International, "Urgent Action. Governor Vetoes Abolition of Death Penalty", 22 June 2018.

³⁸ California, North Carolina, Colorado, Kansas, Montana, Nebraska, Nevada, New Hampshire, Oregon, Pennsylvania and Wyoming. Amnesty International, *Death sentences and executions in 2017*, p. 14.

³⁹ *Supra* note 19, p. 12.

⁴⁰ Amnesty International, [Death sentences and executions in 2014](#), p. 4.

⁴¹ Amnesty International, [Death sentences and executions in 2015](#), p. 12.

⁴² *Supra* note 19, p. 13.

⁴³ As at 20 September 2018. See <https://deathpenaltyinfo.org/execution-list-2018>.

⁴⁴ *Supra* note 19, p. 13.

⁴⁵ Amnesty International, [Death sentences and executions in 2016](#), p. 14, and its report, "USA: Darkness Visible in the Sunshine State. The Death Penalty in Florida", 2018, p. 2.

⁴⁶ *Supra* note 19, p. 16.

mainly carried out in a limited number of states, especially in the south of the country. For example, 30% were carried out in Texas in 2017. Whereas only five states executed people in 2016 (Alabama, Florida, Georgia, Missouri and Texas), their number rose to eight in 2017, with Arkansas, Ohio and Virginia resuming executions.⁴⁷

10. According to the [Death Penalty Information Center](#), since July 2010 almost all executions in the United States have been by lethal injection. Several states use a mixture of three drugs: an anaesthetic or sedative, a paralysing agent and a drug to stop the heart. However, in the last few years the United States has encountered difficulties in procuring products for this purpose, especially anaesthetics, and has consequently resorted to questionable or even secret products or experimental combinations of substances, such as midazolam, a sedative the real effects or even origin of which are not known. This difficulty can be partly put down to the fact that some European pharmaceutical groups refuse or no longer are allowed to export products for execution purposes. There are two major consequences of this situation: some condemned inmates die in agony over an inordinately long period and states are looking for new methods of executing people sentenced to death. In addition, there are many witness reports of botched executions.⁴⁸ In 2014, for example, Dennis McGuire, Clayton Lockett and Joseph Wood were declared dead after many long minutes or even hours during which they gasped and snorted, probably trying to breathe.⁴⁹ In addition to controversy associated with the use of mixtures of unknown drugs for executions, several cases show that prison staff are not qualified to carry out death sentence decisions. For example, in 2009 the execution of Romell Broom failed because staff were unable to find a vein to inject the lethal substance and his execution was ultimately postponed to June 2020 despite the appeals describing this situation as inhuman and degrading treatment. In 2016, Alva Campbell suffered the same fate⁵⁰ and died of natural causes in March 2018. Even more recently, in February 2018, the execution of Doy Lee Ham also failed for the same reasons.⁵¹ In addition, after the release on 5 July 2018 of a revised protocol for lethal injections, 33 death row inmates in Tennessee brought a civil action because of the lack of clarity with regard to the new rules governing executions by means of the controversial use of a mixture of drugs, including midazolam. According to the complainants, this practice could result in torture for individuals sentenced to death.⁵² Furthermore, some drug companies have even brought legal proceedings against states that use their products, including midazolam, in executions.⁵³ For example, in July 2018, an American drug company brought legal proceedings against the state of Nevada, accusing it of having procured its midazolam for an inappropriate purpose. As a result, Nevada postponed the execution of Scott Raymond Dozier.⁵⁴

11. In 2008 the US Supreme Court ruled lethal injections constitutional. However, since these were in short supply it was again asked to rule on the matter. On 29 June 2015, in the *Glossip v. Gross* judgment, it upheld the use of midazolam, stating that the use of the death penalty was constitutional.⁵⁵ Some states are trying to get around the shortage of the drug normally used for lethal injections by testing new substances (such as fentanyl, which was recently used for the first time in a four-drug combination in Nebraska in the execution of Carey Dean Moore, who had spent 38 years on death row).⁵⁶ Others are considering other execution methods. In 2015, Utah decided to reinstate death by firing squad when the drugs used by the authorities are not available.⁵⁷ Recently, Alabama, Mississippi and Oklahoma have authorised execution through the inhalation of nitrogen gas without oxygen.⁵⁸ In Alabama in July 2018, some inmates asked to be executed using this method.⁵⁹ Lastly, some states permit electrocution (nine states) or hanging (three states)

⁴⁷ Ibid, p. 13.

⁴⁸ <http://www.deathpenaltyinfo.org/some-examples-post-furman-botched-executions?scid=8&did=478>.

⁴⁹ Supra note 40, pp. 22 and 23.

⁵⁰ See my [statement](#) of 16 November 2017 on the “failed” execution of Alva Campbell.

⁵¹ Tracy Connor, [Lawyer describes aborted execution attempt for Doyle Lee Hamm as ‘torture’](#), NBC News, 25 February 2018.

⁵² [Tennessee: Inmate’s lawyers look for holes in lethal injection rules during penalty challenge](#), 13 July 2018, Death Penalty News.

⁵³ “Drug companies don’t want to be involved in executions, so they’re suing to keep their drugs out”, *Washington Post*, 13 August 2018.

⁵⁴ [Nevada delays its first execution in 12 years after a drug company objects](#), 12 July 2018, Death Penalty News.

⁵⁵ <https://deathpenaltyinfo.org/node/6180>.

⁵⁶ “[US state poised for first execution with fentanyl](#)”, *Associated Press*, 14 August 2018.

⁵⁷ Gilles Paris, “L’Utah: le peloton d’exécution plutôt que l’injection”, *Le Monde*, 25 March 2015. According to the Death Penalty Information Center, this method is also used in Mississippi and Oklahoma.

⁵⁸ “Drug companies don’t want to be involved in executions, so they’re suing to keep their drugs out”, *Washington Post*, 13 August 2018.

⁵⁹ [Alabama: 8 death row inmates request execution by nitrogen gas](#), The Associated Press, 11 July, 2018.

when these substances are not available.⁶⁰ Recently, Louisiana began debating the reintroduction of hanging, firing squads or electrocution.⁶¹

12. The use of the death penalty in the United States also raises concerns with regard to the people executed. Although this is prohibited by international law and the Eighth Amendment, the United States has on several occasions executed death row inmates who were in all likelihood suffering from a mental disorder. In January 2015, my predecessor, Ms Karamanli, condemned the execution of Warren Hill (in Georgia) and Robert Ladd (in Texas), both of whom appeared to be suffering from a mental disability.⁶² For the same reason, Amnesty International also expressed its condemnation of the execution of Cecil Clayton, aged 74 (on 17 March 2015, Missouri), Andre Cole (14 April 2015, Missouri), Alfredo Rolando Prieto, an El Salvador national (1 October 2015 in Virginia),⁶³ Kenneth Fults (12 April 2016, Georgia) and John Wayne Conner (15 July 2016, Georgia).⁶⁴ I was personally extremely shocked by the execution of Charles Morva, who suffered from a mental disorder, in Virginia on 6 July 2017.⁶⁵ On 9 August 2018, Tennessee used a three-drug mixture, including midazolam, to execute Billy Ray Irick, who showed signs of mental illness and had spent 32 years on death row. This was the first time an execution had been carried out in that state since 2009. According to some witnesses, the condemned man had not been sufficiently anaesthetised.⁶⁶

13. The United States also executes people over 70 years of age,⁶⁷ women⁶⁸ and foreign nationals,⁶⁹ including those who have not obtained the consular assistance to which they are entitled under the Vienna Convention on consular relations of 24 April 1963, which means it is in breach of international law.⁷⁰ It will be recalled that in 2004 the International Court of Justice, following a lawsuit filed by Mexico, ruled against the United States in the *Avena* case⁷¹ for a violation of the Vienna Convention. In 2014, despite the recognition by the federal authorities of their international legal obligations in this area, Texas executed several Mexican nationals who had been deprived of consular protection – despite my predecessors’ interventions.⁷² Until the 2005 Supreme Court judgment in *Roper v. Simmons* in 2005,⁷³ there had even been executions of individuals who were minors at the time of the offences.⁷⁴ For example, Rubén Cárdenas Ramírez was executed on 8 November 2017,⁷⁵ in breach of the United States’ international obligations under the Vienna Convention on Consular Relations: he had not been informed by the Texan authorities of his right as a Mexican national to ask for consular assistance “without delay” after his arrest, and he was among the 52 Mexicans for whom, in 2004, the International Court of Justice ordered the United States to carry out a judicial review of their convictions and sentences.⁷⁶ Next November, Texas is also planning to execute Robert Moreno Ramos, a Mexican national who, according to the defence, was not afforded his country’s consular assistance and suffers from a mental disability.⁷⁷

⁶⁰ <https://deathpenaltyinfo.org/methods-execution>.

⁶¹ [Electrocution, firing squads should be options for death penalty in Louisiana, AG Jeff Landry tells Gov. Edwards](#), KALB news, July 25, 2018.

⁶² [General rapporteur appalled by execution of two men with intellectual disabilities](#), 30 January 2015.

⁶³ Supra note 41, p. 22.

⁶⁴ Amnesty International, supra note 45, pp. 15-16.

⁶⁵ See my statement of [13 July 2017](#).

⁶⁶ [“Tennessee executes Billy Ray Irick”](#), *Tennessean*, 10 August 2018; “Tennessee execution: Billy Ray Irick tortured to death, expert says in new filing”, [eu.tennessean.com](#), 7 September 2018.

⁶⁷ See my statement of 20 April 2018, in which I condemned the execution of Walter Leroy Bloody, aged 83, by Alabama after spending 30 years in prison. Moreover, on 26 May 2017 Thomas Arthur, aged 75, was executed in Alabama – <https://www.amnesty.org/en/documents/amr51/6373/2017/en/>. In 2015, Cecil Clayton, aged 74, was executed in Missouri and in 2016 Brandon Jones, aged 72, was executed in Georgia. See the database at <https://deathpenaltyinfo.org/views-executions>.

⁶⁸ The last woman to be executed was Kelly Gisserdamer (30 September 2015 in the state of Georgia).

⁶⁹ The El Salvador national Alfredo Prieto was executed in the United States (on 10 January 2015 in Virginia), despite a request from the Inter-American Commission on Human Rights to halt his execution; Amnesty International, supra note 41, p. 22.

⁷⁰ Supra note 40, p. 18.

⁷¹ <http://www.icj-cij.org/files/case-related/128/128-20040331-JUD-01-00-EN.pdf>.

⁷² See: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4969&lang=2&cat=> and <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=4806&lang=2&cat=>.

⁷³ See <http://www.deathpenaltyinfo.org/u-s-supreme-court-roper-v-simmons-no-03-633>.

⁷⁴ The last person sentenced to death for a crime committed while still a minor was Scott Allen Hain, who was executed on 3 April 2003.

⁷⁵ Supra note 19, p. 16.

⁷⁶ International Court of Justice, *Avena and Other Mexican Nationals (Mexico. v. United States of America)*, judgment of 31 March 2004, I. C. J. Reports 2004, p. 12.

⁷⁷ [“Mexican national scheduled for execution in Texas despite claims of treaty violations”](#), *Chron*, 3 September 2018.

14. In the spring of 2018, just over fifty per cent of Americans supported the death penalty, with 54% in favour of capital punishment for murderers and 39% against.⁷⁸ As Ms Rose Vines pointed out at the October 2017 hearing, NGOs (such as Sister Helen's Ministry Against the Death Penalty) and lawyers are continuing to work for the complete abolition of capital punishment, with the help of the media and, in particular, social networks. They constantly raise public awareness of this issue, especially by giving media exposure to executions and cases of wrongful convictions. In March 2018, in a speech on combating drug abuse, President Donald Trump said he was in favour of extending the implementation of the death penalty to drug traffickers, leading the Secretary General of the Council of Europe, Thorbjørn Jagland, to voice his concern.⁷⁹

3.3. Japan

15. Japan has been a Council of Europe observer state since 1996. It ratified the International Covenant on Civil and Political Rights on 21 June 1979 but has not ratified the Second Optional Protocol, aiming at the abolition of the death penalty. In Japan, nineteen crimes carry the death penalty (including crimes that do not involve the death of the victim). Amnesty International recorded three executions in 2015 (the same number as in 2014), three in 2016 (including one man aged 75 and one woman) and four in 2017,⁸⁰ all by hanging. Amnesty International also reports new death sentences being handed down: four in 2015, three in 2016 and three in 2017.⁸¹ At the end of 2016, 141 prisoners remained under sentence of death,⁸² but this figure was down to 134 at the end of 2017.⁸³ Amnesty International is also concerned that in 2017 the annual number of executions rose for the first time since 2013.⁸⁴ Moreover, for the first time since 1999 three out of four executions involved men whose appeal to secure a retrial was still pending before the courts. Another disturbing fact was that Teruhiko Seki was executed in December 2017 even though he was only 19 years of age at the time of the crime of which he was convicted.⁸⁵ Under Japanese law, capital punishment may not be imposed on a person who was under 18 when the crime was committed or on an "insane" person". Most often, prisoners are given only a few hours' notice of their execution and their families and lawyers are informed only after it has taken place.⁸⁶ In 2018, the 13 members of the Aum Shinrikyo cult responsible for the deadly sarin gas attack on the Tokyo metro in 1995 were secretly executed in two series of executions on 6 and 26 July. The last time that Japan executed more than ten people in a single year was in 2008. Those executed included individuals who had made applications for a retrial that were still before the courts.⁸⁷ I strongly condemned these executions and once again urged the Japanese authorities to abolish capital punishment.⁸⁸

16. Other Japanese practices alarm human rights activists in particular. First of all, Amnesty International points out that people with mental disabilities have been sentenced to death in Japan and are still on death row.⁸⁹ Moreover, people sentenced to death live in very questionable conditions. They are isolated from other inmates and their contacts with the outside world are limited to rare and closely supervised visits from members of their families, their lawyers and other officially authorised visitors. Some inmates, such as Iwao Hakamada (see below) and Kenji Matsumoto⁹⁰ show signs of seriously disturbed thinking and behaviour due to their detention. Finally, Japan is one of the countries with the longest periods spent on death row, sometimes over thirty years. Unfortunately, as reported by the International Federation for Human Rights,⁹¹ Mr Gunnar Jansson, a former Chair of the Committee on Legal Affairs and Human Rights, and Emma Bonino, a member of the European Parliament on a visit to Japan in 2002, few people can have access to

⁷⁸ According to the Pew Research Center, <http://www.pewresearch.org/fact-tank/2018/06/11/us-support-for-death-penalty-ticks-up-2018/>.

⁷⁹ See the [statement by the Secretary General of the Council of Europe](#) of 21 March 2018.

⁸⁰ Supra note 19, p. 22.

⁸¹ Ibid., p. 22.

⁸² Amnesty International, supra note 45, p. 22, and supra note 41, pp. 33-34.

⁸³ Supra note 19, p. 22.

⁸⁴ Ibid, p. 22.

⁸⁵ [Japan hangs two death row inmates, including man who killed Chiba family as a minor](#), *The Japan Times*; 19 December 2017.

⁸⁶ Amnesty International, [Japan: Two hanged as reprehensible executions continue](#), 13 July 2017.

⁸⁷ Amnesty International, [Japan: Unprecedented spate of executions continues as six more Aum cult members hanged](#), 26 July 2018, and [Japan: Executions of seven Aum cult members fails to deliver justice](#), 6 July 2018.

⁸⁸ See my [statement of 9 July 2018](#).

⁸⁹ Supra note 19, p. 8.

⁹⁰ Supra note 40, p. 32.

⁹¹ FIDH, ["The Death Penalty In Japan, A Practice Unworthy of a Democracy"](#), Report of the International investigation mission, no. 359, March 2003, p. 19.

the places where condemned inmates are executed or even meet them.⁹² The release of death row inmates found to be innocent or their release pending a retrial has sparked heated debate in Japan concerning the death penalty. The best-known case is that of 82-year-old Iwao Hakamada, who has spent more than 40 years on death row. Owing to new doubts about his guilt (it is likely that his “confessions” were forced out of him by the police during a twenty-day interrogation), the Japanese courts decided to release him in March 2014. However, in June 2018 the Tokyo High Court refused to grant him a retrial. Following an appeal, the case is currently being considered by the Supreme Court.⁹³

17. On 20 August 2014, the United Nations Human Rights Committee voiced its concerns about the situation of the death penalty in Japan in its concluding observations on the sixth periodic report of Japan. Firstly, it was concerned that some of the 19 crimes that carried the death penalty did not comply with the Covenant’s requirement of limiting capital punishment to the “most serious crimes”. Secondly, apart from the above-mentioned faults in the system, the Committee also pointed out that the confidentiality of meetings between lawyers and death row inmates was not guaranteed; thirdly, the examinations to decide whether a prisoner was sane were not independent. Fourthly, it emphasised that an application for a retrial or a pardon did not have the effect of staying the execution and was ineffective. Lastly, the Committee also reported that the death penalty had been handed down on various occasions as a result of forced confessions.⁹⁴ The situation in Japan was again discussed by the UN Human Rights Committee on 11 December 2017 and a list of issues was drawn up prior to the seventh periodic report of Japan.⁹⁵ In response to the recommendations and remarks in the 2014 report, NGOs emphasised that the problems identified had not been resolved.⁹⁶ The number of crimes subject to the death penalty (19) is still the same, an independent system for considering the mental health of inmates has still not been put in place and applications for a review of procedures have no suspensive effect. There is a ray of hope in the Supreme Court’s ruling of 10 December 2013 that meetings between persons sentenced to death and their lawyers should be confidential, save in exceptional circumstances. However, discussions between the members of the Aum Shinrikyo cult and their lawyers were held in the presence of prison staff.

18. On 7 October 2016, for the first time, the Japanese Federation of Bar Associations issued a declaration stating its opposition to the death penalty and calling on the authorities to abolish it by 2020.⁹⁷ However, capital punishment still has the broad support of Japanese society (according to a survey conducted in 2014, more than 80% of the population are in favour of its retention) and the authorities are not considering abolishing it or introducing a new moratorium on executions (a moratorium was instituted between November 1989 and March 1993),⁹⁸ despite the most recent recommendations made by a large number of states in connection with the last Universal Periodic Review (UPR) by the United Nations.⁹⁹

3.4. Israel

19. First of all, under a law passed in 1954, Israel has abolished the death penalty for ordinary crimes. This law maintains the legality of the death penalty for certain crimes, such as genocide, crimes against humanity, mass crimes, treason and crimes against the Jewish people. Since the creation of the State of Israel, the death penalty has been carried out only once.¹⁰⁰ The country has sponsored General Assembly resolutions calling for a moratorium on the use of the death penalty, the most recent of these being the fifth and sixth resolutions,¹⁰¹ thereby demonstrating its commitment to its abolition.

20. However, I believe it is important to point out that this law does not prevent the use of the death penalty, especially as the terms “treason” or “crimes against the Jewish people” are subject to interpretation.

⁹² Philippe Pons, “[Au Japon, il ne faut pas ‘troubler l’âme’ des condamnés à mort](#)”, *Le Monde*, 25 March 2005.

⁹³ Justin McCurry “[Japanese man freed after 45 years on death row as court orders retrial](#)”, *The Guardian*, 27 March 2014, and Amnesty International, [Japan: Longest-serving death row inmate deserves retrial despite court ruling](#), 11 June 2018.

⁹⁴ Human Rights Committee, Concluding observations on the sixth periodic report of Japan, [CCPR/C/JPN/CO/6](#), 20 August 2014, para. 13.

⁹⁵ [CCPR/C/JPN/QPR/7](#), 11 December 2017.

⁹⁶ See the reports of the International Federation for Human Rights (FIDH) and the Center for Prisoners’ Rights (CPR), Joint submission for the adoption of the List of Issues, Japan, United Nations Human Rights Committee (CCPR) – 121st session, 27 July 2018, and Human Rights Now, Information for LOIPR, Report on Japan, 24 July 2017.

⁹⁷ Amnesty International, *supra* note 45, p. 22.

⁹⁸ “[Japan has no immediate plans to review death penalty, says minister](#)”, *The Mainichi*, 27 July 2018.

⁹⁹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, Japan, A/HRC/37/15, 4 January 2018.

¹⁰⁰ In 1962, Adolph Eichmann was hanged for his involvement in the Holocaust.

¹⁰¹ Resolutions A/RES/69/186 and A/RES/71/187, Moratorium on the use of the death penalty, adopted on 18 December 2014 and 19 December 2016 respectively.

In the ongoing climate of conflict experienced by the country, there are more and more calls for the restoration of the death penalty. In 2014, a number of Israeli ministers called for its reintroduction, for example Yisrael Katz, the Minister of Transport, who demanded its reinstatement in May that year as a deterrent for certain Palestinian prisoners. The Housing Minister, Uri Ariel, also called for its reintroduction for terrorists after the kidnapping and murder of three Jewish teenagers.¹⁰² In July 2015, the Knesset rejected a bill that would have made it easier for courts to sentence to death those convicted of terrorism-related offences, but in March 2016 the issue was once again raised in the Israeli parliament.¹⁰³ On 3 January 2018, the Knesset gave its preliminary agreement to this draft law – a worrying development to which I responded with a statement reiterating that observer status with the Assembly encourages commitment to the abolition of the death penalty.¹⁰⁴ The adoption of this draft law been postponed on several occasions since last January and the Defence Minister, Avigdor Liberman, has called for it to be passed to make it easier to sentence terrorists to death. However, the Attorney General, Avichai Mandelblit, has come out against such a law.¹⁰⁵ Furthermore, Israel is not a Party to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.¹⁰⁶

3.5. *Kazakhstan*

21. Although it is not a Party to the Second Optional Protocol to the ICCPR, Kazakhstan has gradually reduced the scope of the death penalty. Since 1998, the number of crimes that carry the death penalty in peacetime has been significantly reduced. Although capital punishment has been abolished for ordinary crimes, it still applies to offences that constitute either terrorist acts leading to loss of life or to certain serious crimes committed in wartime, a fact criticised by the UN Human Rights Committee in August 2016.¹⁰⁷ However, a 2014 reform of the Criminal Code raised the number of offences subject to the death penalty from 18 to 19 and came into force on 1 January 2018.¹⁰⁸ On 18 December 2003, President Nursultan Nazarbayev issued a moratorium on executions, which was welcomed on 19 December 2003 by Mr Peter Schieder, then President of the Assembly.¹⁰⁹ Since 12 May 2003 (the date of the last execution), no execution has been carried out in the country. Article 47(2) of the Kazakhstan Criminal Code of 2014¹¹⁰ prohibits the death penalty for individuals under 18 years of age, women and people over 65. In December 2012, 2014 and 2016, Kazakhstan voted in favour of the UN General Assembly resolutions calling for a moratorium on the use of the death penalty.¹¹¹

22. At the end of 2017, following a judgment in November 2016, Ruslan Kulekbayev was still sentenced to death for terrorism-related acts¹¹² having killed 10 people in Almaty in July that year. This was the sixth death sentence handed down since President Nazarbayev signed a moratorium on executions in 2003. Since then, all death sentences have been commuted to life imprisonment.¹¹³ In 2017, no execution or death sentence was recorded.

3.6. *Kyrgyzstan*

23. Kyrgyzstan abolished the death penalty in 2007. On 11 February 2010, it ratified the Second Optional Protocol to the ICCPR, making any reinstatement of capital punishment impossible,¹¹⁴ a fact welcomed by the Assembly in Resolution 1984 (2014), Request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of the Kyrgyz Republic.¹¹⁵

¹⁰² Supra note 40, p. 49.

¹⁰³ Amnesty International, *Israel: Human Rights Situation Remains Dire*, p. 15.

¹⁰⁴ See my statement of 4 January 2018.

¹⁰⁵ Toi Staff, "[Defense minister urges colleagues to endorse death penalty for terrorists](#)", *The Times of Israel*, 25 July 2018.

¹⁰⁶ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en.

¹⁰⁷ Concluding observations on the second periodic report of Kazakhstan, CCPR/C/KAZ/CO/2, paragraph 17.

¹⁰⁸ International Commission against the Death Penalty, [How States abolish the death penalty. 29 Case-Studies, Second edition](#), May 2018, p. 32.

¹⁰⁹ Peter Schieder welcomes moratorium on executions in Kazakhstan, PACE press release of 19 December 2003, 660a(2003).

¹¹⁰ <http://www.legislationline.org/documents/section/criminal-codes/country/21>.

¹¹¹ International Commission against the Death Penalty, [How States abolish the death penalty. 29 Case-Studies, Second edition](#), May 2018, p. 32. (Fn 34).

¹¹² Supra note 19, p. 33.

¹¹³ Amnesty International, [Kazakhstan 2016/2017](#).

¹¹⁴ See "[Kirghizistan definitively outlaws death penalty](#)".

¹¹⁵ [Resolution 1984 \(2014\)](#), paragraph 6.

3.7. Morocco

24. Morocco is not a Party to the Second Optional Protocol to the ICCPR. As an Assembly partner for democracy, the Moroccan Parliament has undertaken to continue its efforts “to raise the awareness of the public authorities and the main players in politics and civil society of the need to make progress in the discussion of [...] the death penalty” and to continue “to encourage the authorities concerned to maintain the de facto moratorium that has been established on executions of the death penalty since 1993”.¹¹⁶ Morocco has not carried out the death penalty since 1993, although 95 people remain under a death sentence.¹¹⁷ However, such sentences are still handed down. In 2015, as reported by Amnesty International, nine people were sentenced to death.¹¹⁸ In 2016, six people were given this sentence (as in 2015, this figure also includes the Western Sahara), while some people given the death penalty had their sentences commuted or were pardoned.¹¹⁹ In 2017, at least 15 people were given death sentences and the authorities commuted four sentences.¹²⁰ The 2011 Constitution expressly enshrines the “right to life” but without abolishing the death penalty.

25. The Moroccan Coalition against the Death Penalty, which groups together seven NGOs, is the leading organisation in Morocco’s abolition movement.¹²¹ It is accompanied in this fight by the Network of Parliamentarians against the Death Penalty in Morocco, the National Human Rights Council and lawyers from six different bar associations. They come together to fight against capital punishment.¹²² However, Moroccan society is still split regarding its abolition.¹²³ In its most recent resolution on evaluation of the partnership for democracy in respect of the parliament of Morocco, of June 2015, the Assembly expressed regret that no tangible progress had been achieved with regard to the death penalty and once again called on the Moroccan Parliament to abolish the death penalty in law, and, pending abolition, to declare a *de jure* moratorium on executions.¹²⁴ This question was also considered in the recent report of the Committee on Political Affairs and Democracy on the “Evaluation of the partnership for democracy in respect of the Parliament of Morocco”,¹²⁵ which will be discussed by the Assembly in the near future. On 19 December 2016, Morocco abstained for the sixth time in a UN vote on an official moratorium on the death penalty with a view to its abolition.¹²⁶ In December 2016, the Human Rights Committee also expressed concern about proposed changes to the Criminal Code which would extend the scope of the death penalty to three new categories of offences (despite a reduction in the number of offences that carry capital punishment). These concerns were also voiced by Amnesty International in September 2017.¹²⁷ After undergoing the Universal Periodic Review by the United Nations, Morocco rejected in May 2018¹²⁸ the recommendation that it bring about the immediate and total abolition of the death penalty.¹²⁹

3.8. Palestinian Authority

26. By becoming a partner for democracy on 4 October 2011,¹³⁰ the Palestinian National Council (PNC) undertook to promote discussions in support of the abolition of the death penalty in the Criminal Code and to continue the de facto moratorium in force in the West Bank since 2005. In the territories administered by the Palestinian Authority, the West Bank continues to pass death sentences but no execution has been recorded since 2005. However, death sentences are still handed down and carried out in the Gaza Strip, which has been under Hamas control since 2007. The methods used are hanging or firing squad. According to

¹¹⁶ “Moroccan Parliament obtains ‘Partner for Democracy’ status with PACE”, Press release – AP032(2011), 21 June 2011.

¹¹⁷ As at 18 September 2018, see <http://www.worldcoalition.org/Morocco>.

¹¹⁸ Supra note 41, p. 65.

¹¹⁹ Supra note 45, pp. 5-6.

¹²⁰ Supra note 19, pp. 30 and 32.

¹²¹ Téo Cazenaves, “[Peine de mort: le Maroc, ‘pays abolitionniste en pratique’](#)”, *Le Desk*, 12 April 2017.

¹²² Fouâd Harit, “[Abolition de la peine de mort au Maroc: les avocats rejoignent le mouvement](#)”, 9 October 2014.

¹²³ Yassine Benargane, “[Au Maroc, la journée mondiale de l’abolition de la peine de mort est passée presque inaperçue](#)”, Yabiladi, yabiladi.com, 11 October 2016.

¹²⁴ [Resolution 2061 \(2015\)](#) adopted on 23 June 2015, paragraph 5.1.

¹²⁵ Adopted on 11 September 2018, rapporteur: Mr Bogdan Klich (Poland, EPP/CD).

¹²⁶ <https://ledesk.ma/2017/04/12/peine-de-mort-le-maroc-pays-abolitionniste-en-pratique/>.

¹²⁷ Human Rights Committee, CCPR/C/MAR/CO/6 of 1 December 2016, paragraph 19, and Amnesty International, [public statement](#) of 21 September 2017.

¹²⁸ Supra note 19, p. 32.

¹²⁹ The Kingdom of Morocco’s position on the Recommendations issued after review of its National Report under the third cycle of the Universal Periodic Review, August 2017, Addendum 1 of the outcome of the review, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MAIndex.aspx>.

¹³⁰ [Resolution 1830 \(2011\)](#) on the Request for partner for democracy status with the Parliamentary Assembly submitted by the Palestinian National Council, 4 October 2011.

Palestinian law, death sentences must be carried out with the agreement of the Palestinian President; however, since 2010, this requirement has never been complied with.¹³¹ In Resolution 2105 (2016)¹³² on evaluation of the partnership for democracy in respect of the Palestinian National Council, the Assembly noted that while a de facto moratorium on executions had been in place since 2005 in the West Bank, courts in Gaza continued to hand down death penalty sentences and Hamas authorities continued to carry out illegal executions. The Assembly roundly condemned these executions and urged the PNC to intervene with Hamas to stop executions in Gaza and to abolish the death penalty in the Palestinian Criminal Code. Despite this call, further executions have been carried out in the Gaza Strip.

27. No executions were recorded in 2015 although twelve death sentences were handed down (10 in Gaza and two in the West Bank).¹³³ In 2016, three executions were carried out and 21 death sentences issued in the Gaza Strip; at least 21 persons were under sentence of death at the end of 2016.¹³⁴ In 2017, six executions were carried out in the Gaza Strip (three in April and three in May), and 16 death sentences were handed down (including one in absentia).¹³⁵ According to the World Coalition against the Death Penalty, no execution has been recorded in 2018 and 33 people are currently under sentence of death.¹³⁶ According to the Palestinian Center for Human Rights (PCHR), eight death sentences have been handed down in 2018.¹³⁷

28. Some NGOs, including Amnesty International and the PCHR, also condemn procedures preceding a death sentence that do not meet international fair-trial standards, with convictions based on confessions probably extracted through torture or ill-treatment. Death sentences have also been passed in absentia.

29. On 6 June 2018, the Palestinian Authority signed the Second Optional Protocol to the ICCPR, a fact that I welcomed in a statement, stressing the need to adopt legislative measures that guarantee compliance of the Criminal Code with these new international commitments. After the signing, the establishment of a moratorium on executions in the Gaza Strip is all the more necessary.¹³⁸ However, on 26 July 2018 new death sentences (including one imposed on a woman) were handed down in the Gaza Strip in an unfair trial, to which I responded by reiterating the Palestinian Authority's international commitments.¹³⁹ Moreover, three new death sentences were handed down on 26 September 2018.

3.9. Jordan

30. Jordan is not a Party to the Second Optional Protocol to the ICCPR. In [Resolution 2086 \(2016\)](#) of 26 January 2016, in which the Assembly conferred "partner for democracy" status on the Jordanian parliament, it also called for the abolition of the death penalty in that country.

31. In Jordan, there has been a moratorium on executions since 2006. Nonetheless, the death penalty continues to be provided for in the Criminal Code. Amnesty International reports that there were two executions (one of an Iraqi female and one of an Iraqi male, by hanging) and three death sentences passed in Jordan in 2015.¹⁴⁰ There were no executions in 2016 but thirteen death sentences were handed down.¹⁴¹ However, in March 2017, fifteen persons were executed (one convicted of murder and fourteen others of terrorism-related offences) within a day, which was strongly condemned by the President of the Assembly.¹⁴² In all, in 2017 there were fifteen executions and at least ten death sentences were recorded.¹⁴³ So far in 2018, no execution has taken place, but three Egyptians were given death sentence on 24 September (the

¹³¹ Amnesty International, [Palestine: Hamas must urgently halt executions of three men sentenced after unfair trial](#), 24 May 2017.

¹³² Adopted on 19 April 2016, paragraph 7.3.

¹³³ Supra note 41, p. 65.

¹³⁴ Supra note 45, p. 38.

¹³⁵ Supra note 19, p. 32.

¹³⁶ As at 18 September 2018, see <http://www.worldcoalition.org/Palestinian-Authority>.

¹³⁷ ["Four Death Sentences in One Month; Two Death Sentences Issued Against Two Civilians in the Gaza Strip"](#), Palestinian Center for Human Rights, 26 July 2018, and ["Death Penalty Should Immediately Stop: 3 New Death Sentences Issued in Gaza"](#), 26 September 2018.

¹³⁸ See my statement of 14 June 2018.

¹³⁹ See my statement of 1 August 2018.

¹⁴⁰ Supra note 41, p. 52.

¹⁴¹ Amnesty International, supra note 45, p. 30.

¹⁴² See his statement of 4 March 2017.

¹⁴³ Supra note 19, pp. 38 and 39.

judgment is not final yet). To the knowledge of the World Coalition Against the Death Penalty, 120 people are currently under a death sentence.¹⁴⁴

32. In Resolution 2183 (2017) of October 2017,¹⁴⁵ the Assembly regretted the fact that while a de facto moratorium on executions was purportedly introduced in 2006, the courts continue to hand down death sentences. It called on the Jordanian Parliament to intervene with the authorities to stop executions and reinstate the moratorium pending the abolition of the death penalty in the Criminal Code, in keeping with the commitment to act to abolish capital punishment, which is one of the criteria for granting partner for democracy status (Rule 64.2 of the Assembly's Rules of Procedure). The Assembly has decided to continue to follow the implementation of the reforms in Jordan very closely and to offer the Jordanian Parliament its full assistance. It will make a new assessment of this partnership within two years from October 2017.

3.10. Belarus

33. Belarus entered into international commitments by ratifying the International Covenant on Civil and Political Rights on 12 November 1973, but is not a Party to the Second Optional Protocol. It is the only state on the continent of Europe that still carries out executions in its territory. The method of execution employed is the firing squad. In 2015, Amnesty International reported that there had been no executions but at least two death sentences were recorded.¹⁴⁶ In April 2016, Belarus resumed executions after a 17-month hiatus; at least four executions were carried out (Syarhei Ivanou, Hyanadz Yakavitski, Syarhei Khmialeuski¹⁴⁷ and Ivan Kulesh; the latter apparently suffered from a personality disorder).¹⁴⁸ Amnesty International also reports that four death sentences were handed down in 2016.¹⁴⁹ In 2017, there were at least two executions (Siarhei Vostrykau and Kiryl Kazachnok – of whose execution I had no knowledge until March 2018)¹⁵⁰ and at least four death sentences (Aliaksei Mikhalenya and Viktor Liotau – whose executions took place in May 2018¹⁵¹ – and Ihar Hershankou and Siamion Berazhnoy).¹⁵² Nonetheless, according to the World Coalition against the Death Penalty, the number of persons under sentence of death currently stands at four.¹⁵³ Two executions (of Aliaksei Mikhalenya and Viktor Liotau) have been carried out and two death sentences handed down (Viacaslau Sucharka and Aliaksandr Zylnikau) in 2018. It should be borne in mind that since figures on the application of the death penalty are classified as a state secret, these are minimum estimates and the actual figures may be higher.

34. The executions in Belarus raise a number of concerns in the light of two practices contrary to international law. Firstly, in the last few years, it has been revealed that several sentences have been carried out in secret. The Belarusian authorities execute people sentenced to death without giving them prior notice or informing their families or their lawyers. Furthermore, families are unable to recover the body of the executed family member or even to find out where he or she is buried. For example, on 8 May 2014 the Mogilev Regional Court announced that Rygor Yuzepchuk¹⁵⁴ had been executed in Belarus without stating the date of his execution or where the body had been taken. Another example is that of the aforementioned Siarhei Vostrykau, executed in April 2017: the Homel Regional Court did not inform his mother of his death until the beginning of May 2017. Article 175 of the Criminal Executive Code allows the government not to return the bodies of those executed to relatives and not to disclose the place of burial.¹⁵⁵

35. Secondly, many death sentences are passed at the end of unfair trials during which proof of guilt is provided by "confessions" drawn up after the use of torture or in the absence of any defence counsel.¹⁵⁶ The

¹⁴⁴ As at 18 September 2018, see: <http://www.worldcoalition.org/Jordan>.

¹⁴⁵ Evaluation of the partnership for democracy in respect of the Parliament of Jordan, Resolution 2183 (2017), adopted by the Assembly on 10 October 2017, paragraphs 6.8 and 13. See also the report of the Committee on Political Affairs and Democracy, rapporteur: Ms Josette Durrieu (France, SOC), Doc. 14399 and addendum, and the opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Andrea Rigoni (Italy, ALDE), Doc. 14412.

¹⁴⁶ *Supra* note 41, p. 44.

¹⁴⁷ European Union, Directorate General for External Policies of the Union, "Human rights in Belarus: The EU's role since 2016", PE 603.870, June 2018, p. 38.

¹⁴⁸ Amnesty International, *supra* note 45, pp. 28-29.

¹⁴⁹ *Ibid*, p. 28.

¹⁵⁰ See my statement of 8 March 2018.

¹⁵¹ See my statement of 30 May 2018.

¹⁵² *Supra* note 19, p. 28, and European Union, Directorate General for External Policies, "Human rights in Belarus: The EU's role since 2016", PE 603.870, June 2018, p. 38 (Fn 152).

¹⁵³ As at 18 September 2018, see: <http://www.worldcoalition.org/Belarus>.

¹⁵⁴ Alternative spelling: Ryhor Yuzepchyk.

¹⁵⁵ Amnesty International, *Death sentences and executions in 2013*, p. 28.

¹⁵⁶ *Ibid*, p. 29. See also the very controversial case of the executions on 18 March 2012 of Dimitri Konovalov and Vadislav Kovalev, who had been sentenced and executed after a bungled investigation, compounded by the apparent

Belarusian authorities do not hesitate to carry out secret executions of death row inmates whose cases are being considered by the Human Rights Committee. In 2010 and 2011, Andrei Zhuk and Vasily Yuzepchuk, as well as Oleg Grishkovtsov and Andrei Burdyko, whose cases were being considered by the UN Human Rights Committee, were executed despite complaining that they had been tortured and not been given a fair trial. In April 2014, Belarus executed 23-year-old Pavel Selyun, who had been sentenced to death in June 2013. At that time, the Human Rights Committee was considering the case of Pavel Selyun and had asked the Belarusian authorities to stay the execution pending its conclusions,¹⁵⁷ a measure that Belarus deliberately failed to comply with. In November 2014, 25-year-old Alyksandr Haryunou was executed even though he had appealed to the UN Human Rights Committee alleging that he had not been given a fair trial. The Committee then called on the Belarusian authorities to stay his execution until it had finished considering his case.¹⁵⁸ In 2016, Syarhei Ivanou, Hyanadz Yakavitski and Syarhei Khmialeuski were executed in spite of the Human Rights Committee having asked the authorities not to carry out the execution while it considered the case.¹⁵⁹ Aliaksei Mikhalenya, sentenced to death in 2017, was executed in May 2018 despite the UN's request for an interim measure.¹⁶⁰ The Belarusian President, Alexander Lukashenko, can grant a pardon after the confirmation of a death sentence but has only done so once since he came to power in 1994.¹⁶¹ In his report published in April 2017, the UN Special Rapporteur on the situation of human rights in Belarus emphasised that the death sentences handed down in the country were disputable owing to the failure to comply with the guarantees of a fair trial and the lack of judicial independence, adding that "the secrecy surrounding executions and the fact that no details on executions or places of burial are given to the families also amount to torture".¹⁶²

36. The Assembly has had occasion to express its grave concern about the increase in executions and death sentences in Belarus and the way they are carried out, as in Resolution 1857 (2012) and Resolution 2172 (2017).¹⁶³ In the latter, it called on the authorities to introduce a de jure moratorium on the death penalty and executions, with a view to their abolition. Given the fact that no such moratorium had been introduced and no other progress had been made, it concluded that it was not in a position to re-establish the special guest status for the parliament of Belarus.¹⁶⁴ The rapporteur of the Committee on Political Affairs and Democracy, Mr Rigoni, on several occasions emphasised that the death penalty is fundamentally contrary to the Council of Europe's values.¹⁶⁵ In October 2017,¹⁶⁶ the Council of Europe Committee of Ministers reiterated its request to the Belarusian authorities to introduce an official moratorium on executions without delay and commute all death sentences handed down. In November 2017, in its response to Assembly Recommendation 2107 (2017) on the situation in Belarus, it once again deplored the fact that the country's authorities are continuing to carry out death sentences.¹⁶⁷ For my part, I have issued numerous joint statements with Mr Rigoni each time a death sentence has been passed or an execution carried out in order to express condemnation and reiterate the need for Belarus to abolish the death penalty.¹⁶⁸ Moreover, the situation in Belarus is being closely monitored by the European Union, which regularly condemns new executions and death sentences. As far as the UN is concerned, the Special Rapporteur on the situation of human rights in Belarus (currently Miklós Haraszti) contributes to monitoring the development of the situation and makes recommendations, assists the Belarusian government in fulfilling its international human rights obligations and submits annual reports to the Human Rights Council and the UN General Assembly.¹⁶⁹ There are few glimmers of hope but they deserve to be mentioned. In connection with the UN Human Rights

lack of a motive on the part of the individuals convicted and the total lack of material evidence. "[Vives critiques après l'exécution de deux condamnés en Biélorussie](#)", *Le Monde*, 19 March 2012.

¹⁵⁷ Supra note 40, p. 42.

¹⁵⁸ Ibid, p. 42.

¹⁵⁹ Amnesty International, [supra note 45](#), p. 28.

¹⁶⁰ Directorate General for External Policies of the Union, Human rights in Belarus: The EU's role since 2016, PE 603.870, June 2018, p. 38.

¹⁶¹ Amnesty International, Belarus. [Belarus: first execution of 2017 ignores continuing pressure for abolition](#), public statement of 19 May 2017.

¹⁶² UN Human Rights Council, Report of the Special Rapporteur on the situation of human rights in Belarus, A/HRC/35/40, 21 April 2017, para. 103.

¹⁶³ [Resolution 1857 \(2012\)](#), The situation in Belarus, 25 January 2012, and [Resolution 2172 \(2017\)](#) on the same subject, adopted on 27 June 2017.

¹⁶⁴ Paragraphs 5.4.2. and 8 of [Resolution 2172 \(2017\)](#).

¹⁶⁵ See his report, [Doc. 14333](#), and our joint statements of 5 May 2017 on the execution of Siarhei Vostrykau (and of 24 July 2017).

¹⁶⁶ Committee of Ministers, Decision on the abolition of the death penalty, adopted at the 1298th meeting, CM/Del/Dec(2017)1298/4.1, 25 October 2017, para. 8.

¹⁶⁷ Doc. 14446, Reply to Assembly Recommendation 2107 (2017), adopted at the 1301st meeting of the Ministers' Deputies, 29 November 2017.

¹⁶⁸ See, for example, my statements of 30 May 2018, 8 March 2018 and 23 January 2018.

¹⁶⁹ Retrieved on 2 August 2018: <https://www.ohchr.org/en/hrbodies/sp/countriesmandates/by/pages/srbelarus.aspx>.

Council's Universal Periodic Review, the authorities undertook to implement a number of recommendations, including to carry out public campaigns explaining the arguments for the abolition of the death penalty and to consider introducing a moratorium on executions.¹⁷⁰ It would appear that the authorities are adopting an increasingly more positive stance on the abolition of the death penalty. In May 2017, a working group on the death penalty was set up in the Belarus parliament.¹⁷¹ During the Assembly's January 2018 part-session, I met its Chair, Mr Andrei Naumovich, who told me that the authorities were considering a new referendum on the death penalty but the majority of the population were still in favour of retaining it.¹⁷² However, the working group was co-operating with several international experts, including from the United Kingdom, on the question of abolition. This issue was also recently discussed at a round table on "Legal Aspects of the Abolition of the Death Penalty", which was held in the country on 18 April 2018 by the Council of Europe in co-operation with the aforementioned working group of the Belarusian National Assembly.¹⁷³ Recently, in June 2018, the Belarus Supreme Court decided to suspend and review the death sentences of Ihar Hershankou and Siamion Berazhno. This unprecedented decision was welcomed by Mr Righi and me, and we hope it will be a step towards the establishment of a moratorium on the death penalty.¹⁷⁴

4. Conclusion

37. By and large, the global trend is towards less and less use of the death penalty. This abolitionist trend is even more pronounced in Europe, where it is driven by the Council of Europe, and in neighbouring countries, but there is still work to be done. However, despite the abolitions and moratoriums, within Council of Europe member states, there are still some calls for the restoration of capital punishment. For example, in France several private member's bills have been tabled to reinstate it, the last dating from 2004.¹⁷⁵ After the January 2015 attacks, the President of the National Front, Marine Le Pen, publicly stated that she was in favour of "a referendum on the death penalty in France".¹⁷⁶ In Hungary, in 2015, Prime Minister Viktor Orbán commented publicly on its reintroduction.¹⁷⁷ The situation in Turkey, following the attempted coup d'état of 15 July 2016, and President Erdoğan's statements on organising a referendum on reintroducing the death penalty are even more worrying.¹⁷⁸ The recent discovery in Turkey of children who had disappeared and were found dead reignited the debate on the death penalty. President Erdoğan has voiced his support for its restoration for terrorist offences. Last July, he agreed with Devlet Bahçeli, the leader of the Nationalist Movement Party (MHP), a member of the governing coalition, on the idea of amending the criminal law to introduce the possibility of handing down the death penalty for perpetrators of terrorist offences and serious crimes against children and women.¹⁷⁹ In the United Kingdom, the government's decision to extradite Alexandra Kotey and El Shafee Elsheikh, both accused of committing crimes as members of IS, to the United States rekindled the debate on the United Kingdom's commitment to the abolition of the death penalty. The Home Secretary, Sajid Javid, decided to approve their extradition after negotiations with the American authorities but did not ask for the traditional diplomatic assurance that the death penalty would not be imposed. The extradition was suspended following a request from the family, who feared a death sentence would be handed down on American soil.¹⁸⁰ According to Ben Emmerson QC, a judge for the UN International Criminal Tribunals and former UN Special Rapporteur on Counter-Terrorism, "(t)he Home Secretary's decision in this case is in the clearest possible breach of the European Convention on Human Rights".¹⁸¹

¹⁷⁰ A/HRC/30/3 of 13 July 2015, paragraph 11, and A/HRC/30/3/Add.1 of 30 July 2015.

¹⁷¹ "Belarus parliament discusses death penalty issues", BelTA (Belarus), 3 May 2017.

¹⁷² See also Maud Margenat, "[Dans le couloir de la mort biélorusse](#)", *Libération*, 12 April 2018.

¹⁷³ See the news item at <https://www.coe.int/en/web/national-implementation/-/abolition-of-death-penalty-discussed-in-minsk>.

¹⁷⁴ See my statement of 18 June 2018.

¹⁷⁵ <http://www.assemblee-nationale.fr/histoire/peinedemort/retablissement.asp>, retrieved on 2 August 2018.

¹⁷⁶ "[Charlie Hebdo' : Marine Le Pen pour un référendum sur la peine de mort](#)", *Le Point*, 8 January 2015.

¹⁷⁷ See, for example, http://www.lemonde.fr/les-decodeurs/article/2015/05/21/viktor-orban-peut-il-retablir-la-peine-de-mort-en-hongrie_4637096_4355770.html and

<http://www.theguardian.com/world/2015/apr/30/eu-jean-claude-juncker-viktor-orban-hungary-death-penalty-return>.

¹⁷⁸ AFP, "[Turquie : la France s'inquiète d'un référendum sur la peine de mort](#)", *Le Point*, 17 April 2017.

¹⁷⁹ Mehmet Cetingulec, "[Child tragedies reignite death penalty calls in Turkey](#)", *Al-Monitor*, 17 July 2018; "[Turkish leader in death penalty vow after bomb kills mother and baby](#)", *middleasteye.net*, 2 August 2018, and "[Turkish leaders agree to bring back death penalty](#)", *middleasteye.net*, 29 August 2018.

¹⁸⁰ Ewen MacAskill, "[Home Office suspends cooperation over US death penalty threat for Isis pair](#)", *The Guardian*, 26 July 2018.

¹⁸¹ James Crisp, "[European human rights judges will rule 'Isil Beatles' plan illegal, say experts](#)", *The Telegraph*, 28 July 2018.

38. In several statements, the Committee on Legal Affairs and Human Rights and I¹⁸² have reiterated that the rejection of capital punishment is a basic principle of our Organisation. The Assembly, which has helped turn Europe into death penalty free continent, by making a moratorium on executions and a commitment to abolition a condition for accession to the Council of Europe, will not accept any backsliding on this question. Reintroducing the death penalty would purely and simply be incompatible with a state's continuing membership of the Council of Europe. It should also be noted that in January 2018, in Recommendation 2123 (2018) on "Strengthening international regulations against trade in goods used for torture and the death penalty",¹⁸³ the Assembly called for a ban on the trade in goods that have no practical use other than for the purposes of the death penalty or torture and called on Council of Europe member states to apply the approach adopted by the European Union (see Council Regulations 1236/2005 and 2016/2134).¹⁸⁴ According to the Assembly, on the basis of their existing legal obligations "Council of Europe member states are required to take effective measures to prevent activity within their jurisdictions that might contribute to or facilitate capital punishment, torture and inhuman or degrading treatment or punishment in other countries, including by effectively regulating the trade in goods that may be used for such purposes".¹⁸⁵ In its recent reply to this recommendation, the Committee of Ministers reiterated its commitment to the abolition of capital punishment and expressed its support for international regulations against the trade in goods used for torture and the death penalty.¹⁸⁶

39. Reference should also be made to an important step forward by the Catholic Church (the Holy See has observer status with the Council of Europe): on 2 August 2018, Pope Francis inserted into the Catechism a reference to the Catholic Church's categorical opposition to the death penalty, which is considered "inadmissible". He now wants the Church to work "with determination" for its abolition worldwide.¹⁸⁷

40. In conclusion, the Council of Europe is endeavouring to protect individuals against the death penalty in both its member and observer states and in neighbouring countries with co-operation status, such as "partner for democracy" status. The Assembly has always played a key role in this fight and must continue to do so in order to protect the values that it is the Council of Europe's duty to uphold. It has to remain vigilant about the developments in certain member states, bearing in mind certain political statements promoting the reintroduction of the death penalty.

¹⁸² See, for example, the committee's statement of 10 October 2017 and my statement of 19 April 2017.

¹⁸³ [Recommendation 2123 \(2018\)](#), adopted by the Assembly on 26 January 2018.

¹⁸⁴ See our Committee's report, rapporteur: Mr Vusal Huseynov (Azerbaijan, EPP/CD), Doc. 14454.

¹⁸⁵ Paragraph 3 of Recommendation 2123 (2018).

¹⁸⁶ Doc. 14614 of 14 September 2018.

¹⁸⁷ ["Le pape inscrit dans le catéchisme une opposition catégorique à la peine de mort"](#), *Le Monde*, 2 August 2018.