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INTERNATIONAL STANDARDS ON THE DEATH PENALTY

1. INTRODUCTION

This document gives extracts of international instruments relevant to the abolition or restriction of the death penalty, arranged by subject. The texts of the relevant sections of the instruments are given in the Appendix.

Some of the instruments are international treaties, binding on all states which become parties to them. Others are in the form of resolutions adopted by United Nations (UN) bodies and other intergovernmental organizations. Some are of worldwide scope: they apply to all countries, or to all states parties, which can be from any part of the world. Others emanate from regional intergovernmental organizations and apply to states in those regions.

Among other things, the instruments set forth safeguards and restrictions on the death penalty.¹ As more and more countries in the world abolish the death penalty in law, it is important to understand that these restrictions and safeguards are not intended to justify the retention of the death penalty, a punishment which Amnesty International holds to be a violation of human rights. Thus, Article 6 of the International Covenant on Civil and Political Rights, which sets forth safeguards and restrictions on the death penalty, states explicitly that these are to be applied in "countries which have not abolished the death penalty" (Article 6(2)) and goes on to state: "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" (Article 6(6)).²

A checklist of the restrictions and safeguards appearing in different international instruments and a list indicating the scope of the various instruments are given in Tables 1 and 2 at the end of the document.

2. GENERAL HUMAN RIGHTS PRINCIPLES

2.1 The right to life and the right not to be subjected to cruel, inhuman or degrading punishment are recognized in the Universal Declaration of Human Rights, other international human rights instruments, and many national constitutions. Amnesty International considers that the death penalty violates these rights. This view is finding increasing acceptance among intergovernmental organizations and in national court judgments.³

2.2 On 24 October 1990 the Hungarian Constitutional Court declared that the death penalty violates the "inherent right to life and human dignity" as provided under Article 54 of the country's constitution.⁴

2.3 On 6 June 1995 the South African Constitutional Court declared the death penalty to be incompatible with the prohibition of "cruel, inhuman or degrading treatment or punishment" under the country's interim constitution.⁵ Eight of the 11 judges also found that the death penalty violates the right to life.

2.4 The European Court of Human Rights has held that "the manner in which [a death sentence] is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('European Convention on Human Rights')]."⁶

3. ABOLITION

3.1 In a general comment on Article 6 of the International Covenant on Civil and Political Rights, adopted in 1982, the Human Rights Committee established under that treaty has stated that Article 6 "refers generally to abolition [of the death penalty] in terms which strongly suggest ... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life..."⁷

3.2 The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989, states in its preamble: "...abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights".

3.3 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that he "strongly supports the conclusions of the Human Rights Committee and emphasizes that the abolition of capital punishment is most desirable in order fully to respect the right to life."⁸ He has urged governments of countries where the death penalty is still enforced "to deploy every effort that could lead to its abolition."⁹

3.4 In recommendation 1246 (1994), adopted on 4 October 1994, the Parliamentary Assembly of the Council of Europe stated that it "considers that the death penalty has no legitimate place in the penal systems of modern civilized societies, and that its application may well be compared with torture and be seen as inhuman and degrading punishment within the meaning of Article 3 of the European Convention on Human Rights". In resolution 1044 (1994), adopted on 4 October 1994, the Parliamentary Assembly of the Council of Europe called "upon all the parliaments in the world which have not yet abolished the death penalty, to do so promptly following the example of the majority of Council of Europe member states".

3.5 In 1998 the European Union (EU) adopted Guidelines to EU Policy towards Third Countries on the Death Penalty. The Guidelines state that "abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights". They establish as an EU objective "to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states".

3.6 In July 1998 an international conference in Rome adopted the Statute of the International Criminal Court, in which the death penalty is excluded from the punishments which this court will be authorized to impose, even though it has jurisdiction over extremely grave crimes: crimes against humanity,

including genocide, and violations of the laws of armed conflict. Similarly, in establishing the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively, the UN Security Council excluded the death penalty for these crimes.¹⁰

4. INTERNATIONAL TREATIES FAVOURING ABOLITION

4.1 The community of nations has adopted three international treaties providing for the abolition of the death penalty. One is of worldwide scope; the other two are regional.

4.1.1 The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol.

4.1.2 Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights") concerning the abolition of the death penalty, adopted by the Council of Europe in 1982, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes "in time of war or of imminent threat of war".

4.1.3 The Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in wartime if they make a declaration to that effect at the time of ratifying or acceding to the Protocol.

5. NON-USE

5.1 In resolution 1998/8, adopted on 3 April 1998, the UN Commission on Human Rights called on all states that still maintain the death penalty "to establish a moratorium on executions, with a view to completely abolishing the death penalty".

5.2 In resolution 1044 (1994), adopted on 4 October 1994, the Parliamentary Assembly of the Council of Europe urged "all heads of state and all parliaments in whose countries death sentences are passed to grant clemency to the convicted."

5.3 In resolution 1097 (1996), adopted on 28 June 1996, the Parliamentary Assembly of the Council of Europe stated that "the willingness...to introduce a moratorium [on executions] upon accession [to the Council of Europe] has become a prerequisite for membership of the Council of Europe on the part of the Assembly."

5.4 In resolution B4-0468, 0487, 0497, 0513 and 0542/97, adopted on 12 June 1997, the European Parliament (the parliamentary body of the European Union) called on all countries to adopt a moratorium on executions.¹¹

6. REDUCTION IN SCOPE

6.1 In resolution 32/61, adopted on 8 December 1977, the UN General Assembly stated: "...the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment..."

6.2 In resolution 1998/8, adopted on 3 April 1998, the UN Commission on Human Rights called on all states that still maintain the death penalty "progressively to restrict the number of offences for which the death penalty may be imposed".

7. NON-EXTENSION OF SCOPE; NON-REINTRODUCTION; NON-INCREASE OF USE

7.1 Article 4(2) of the American Convention on Human Rights states that the application of the death penalty "shall not be extended to crimes to which it does not presently apply." Article 4(3) states: "The death penalty shall not be reestablished in states that have abolished it."

7.2 The Human Rights Committee established under the International Covenant on Civil and Political Rights has stated that "Extension of the scope of application of the death penalty raises questions as to the compatibility with article 6 of the Covenant."¹²

7.3 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated: "The scope of application of the death penalty should never be extended..."¹³ He has deplored reinstatements and expansions of the scope of the death penalty and has stated that these developments "are in clear violation of the international trend towards abolishing the death penalty."¹⁴ He has also expressed regret at the resumption of executions after many years in several countries.¹⁵

7.4 The UN High Commissioner for Human Rights has stated that the increasing use of the death penalty in a number of states "is a matter of serious concern and runs counter to the international community's expressed desire for the abolition of the death penalty."¹⁶

8. NON-RETROACTIVE USE; OFFENDERS TO BENEFIT FROM LIGHTER PUNISHMENT IF DEATH PENALTY IS ABOLISHED

8.1 Article 6(2) of the International Covenant on Civil and Political Rights states that a death sentence may be imposed only "in accordance with the law in force at the time of the commission of the crime".¹⁷

8.2 Article 15(1) of the International Covenant on Civil and Political Rights states that a heavier penalty shall not be imposed than the one that was applicable at the time when the criminal offence was committed, and that if, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.¹⁸

9. SCOPE OF CRIMES PUNISHABLE BY DEATH

9.1 Article 6(2) of the International Covenant on Civil and Political Rights states: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes..."

9.2 In a general comment on Article 6 of the International Covenant on Civil and Political Rights, adopted in 1982, the Human Rights Committee established under that treaty stated: "The Committee is of the opinion that the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."

9.3 Safeguard 1 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "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."

9.4 Article 4(4) of the American Convention on Human Rights states: "In no case shall capital punishment be inflicted for political offences or related common crimes."

9.5 The Human Rights Committee established under the International Covenant on Civil and Political Rights has stated that "the imposition ... of the death penalty for offences which cannot be characterized as the most serious, including apostasy, committing a third homosexual act, illicit sex, embezzlement by officials, and theft by force, is incompatible with article 6 of the Covenant".¹⁹

9.6 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "the death penalty should be eliminated for crimes such as economic crimes and drug-related offences."²⁰

10. PEOPLE AGAINST WHOM THE DEATH PENALTY SHOULD NOT BE USED

10.1 Article 6(5) of the International Covenant on Civil and Political Rights states: "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."

10.2 Article 4(5) of the American Convention on Human Rights states: "Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women."

10.3 Article 37(a) of the UN Convention on the Rights of the Child states: "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age".

10.4 Safeguard 3 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "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 penalty be carried out on pregnant women, or on new mothers, or on persons who have become insane."

10.5 In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution". The Economic and Social Council also recommended that member states establish "a maximum age beyond which a person may not be sentenced to death or executed".

10.6 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "international law prohibits the capital punishment of mentally retarded or insane persons, pregnant women and mothers of young children."²¹ He has also stated that governments that continue to enforce capital punishment legislation "with respect to minors and the mentally ill are particularly called upon to bring their domestic legislation into conformity with international legal standards. States should consider the adoption of special laws to protect the mentally retarded, incorporating existing international standards."²²

11. SAFEGUARDS FOR FAIR TRIALS IN DEATH PENALTY CASES

11.1 Article 14 of the International Covenant on Civil and Political Rights sets forth standards for fair trial. These include the right of anyone facing a criminal charge to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proved guilty; the right to be informed promptly and in detail in a language which he or she understands of the nature and cause of the charges against him or her; the right to have adequate time and facilities for the preparation of a defence; the right to communicate with counsel of the defendant's choosing; the right to free legal assistance for defendants unable to pay for it; the right to examine witnesses for the prosecution and to present witnesses for the defence; the right to free assistance of an interpreter if the defendant cannot understand or speak the language used in court.

11.2 The American Convention on Human Rights (Article 8), the African Charter on Human and People's Rights (Article 7) and other international instruments also set forth standards for fair trial.

11.3 Safeguard 5 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "Capital punishment may only be carried out pursuant to a final judgment 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."

11.4 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has reiterated "that proceedings leading to the imposition of capital punishment must conform to the highest standards

of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account."²³

11.5 In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states strengthen further the rights of those facing the death penalty by "(a)ffording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases".

11.6 In resolution 1996/15, adopted on 23 July 1996, the UN Economic and Social Council encouraged UN member states in which the death penalty has not been abolished to ensure that defendants facing a possible death sentence are given all guarantees to ensure a fair trial, bearing in mind the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers, the UN Guidelines on the Role of Prosecutors, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the UN Standard Minimum Rules for the Treatment of Prisoners.

11.7 In resolution 1996/15, adopted on 23 July 1996, the UN Economic and Social Council encouraged UN member states in which the death penalty has not been abolished "to ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court".

11.8 The Human Rights Committee established under the International Covenant on Civil and Political Rights has stated that in cases involving capital punishment, "unavailability of legal aid amounts to a violation of article 6 *juncto* article 14 of the Covenant."²⁴

12. RIGHT TO APPEAL TO A COURT OF HIGHER JURISDICTION

12.1 Article 14(5) of the International Covenant on Civil and Political Rights states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."²⁵

12.2 Safeguard 6 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "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."

12.3 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated with reference to capital cases that "proceedings must guarantee the right of review of both actual and

legal aspects of the case by a higher tribunal, composed of judges other than those who dealt with the case at the first instance."²⁶

13. RIGHT TO SEEK CLEMENCY

13.1 Article 6(4) of the International Covenant on Civil and Political Rights states: "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."²⁷

13.2 Safeguard 7 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "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."

13.3 In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council recommended that UN member states provide for "mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence".

13.4 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated: "Appeals for clemency should provide effective opportunities to safeguard lives."²⁸

14. ADEQUATE TIME BETWEEN SENTENCE AND EXECUTION

14.1 In resolution 1989/64, adopted on 24 May 1989, the UN Economic and Social Council called on UN member states in which the death penalty may be carried out "to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency".

14.2 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has recommended "that States establish in their internal legislation a period of at least six months before a death sentence imposed by a court of first instance can be carried out, so as to allow adequate time for the preparation of appeals to a court of higher jurisdiction and petitions for clemency."²⁹ He has stated that "Such a measure would prevent hasty executions while affording defendants the opportunity to exercise all their rights."³⁰

15. EXECUTION NOT TO BE CARRIED OUT WHILE APPEAL OR PETITION FOR CLEMENCY IS PENDING

15.1 Safeguard 8 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984, states: "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."³¹

16. OFFICIALS RESPONSIBLE FOR EXECUTION TO BE INFORMED OF STATUS OF CASE

16.1 In resolution 1996/15, adopted on 23 July 1996, the UN Economic and Social Council called on UN member states in which the death penalty may be carried out "to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question".

16.2 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has stated that "officials who are responsible for carrying out an execution should be fully informed of the state of appeals and petitions for clemency of the prisoner in question, and they should be instructed not to carry out an execution while any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence is still pending."³²

17. PUBLIC EXECUTIONS

17.1 The Human Rights Committee established under the International Covenant on Civil and Political Rights has stated that "Public executions are ... incompatible with human dignity."³³

18. TREATMENT OF PRISONERS UNDER SENTENCE OF DEATH

18.1 In resolution 1996/15, adopted on 23 July 1996, the UN Economic and Social Council urged UN member states in which the death penalty may be carried out "to effectively apply the [UN] Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering."

Notes

1. William A. Schabas, Professor of Law at the University of Quebec at Montreal, has commented that the norms that restrict the scope of the death penalty "are in reality 'partial' abolition". As Schabas has observed, "Given the enormous and rapid progress in the development of international norms respecting the death penalty since the end of the Second World War, the general acceptance of abolition and its elevation to a customary norm of international law, perhaps even a norm of *jus cogens*, may be envisaged in the not too distant future". (William A. Schabas, *The Abolition of the Death Penalty in International Law*, second edition, Cambridge University Press, Cambridge, United Kingdom, 1997, pp. 22, 20)

2. William A. Schabas has noted that these "two important references to abolition" were added to the draft text of the International Covenant on Civil and Political Rights when it was under consideration at the Third Committee of the UN General Assembly. The reference in Article 6(2) "indicated not only the existence of abolitionist countries but also the direction which the evolution of criminal law should take", while the reference in Article 6(6) "set a goal for parties to the covenant. The *travaux préparatoires* indicate that these changes were the direct result of efforts to include a fully abolitionist stance in the covenant. They represented an intention ... to express a desire to abolish the death penalty, and an undertaking by States to develop domestic criminal law progressively towards abolition of the death penalty." (*Ibid.*, p. 73)
3. See Schabas, *op. cit.*; William A. Schabas, *The Death Penalty as Cruel Treatment and Torture*, Northeastern University Press, Boston, Massachusetts, USA, 1996; William A. Schabas, *The International Source Book on Capital Punishment*, edited by William A. Schabas, Northeastern University Press, Boston, Massachusetts, USA, 1997.
4. The judgment was on a petition brought by the Hungarian League against the Death Penalty. The judgment had the effect of abolishing the death penalty for all crimes in Hungary.
5. *Makwanyane and Mchunu v. The State*, paragraphs 95, 146. The judgment had the effect of abolishing the death penalty for murder.
6. European Court of Human Rights, Soering case (1/1989/161/217), judgment, Strasbourg, 7 July 1989, paragraph 104. Article 3 of the European Convention on Human Rights prohibits torture and inhuman or degrading treatment or punishment.
7. See Appendix 6.
8. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1997/60, 24 December 1996, paragraph 79.
9. *Extrajudicial, summary or arbitrary executions: Note by the Secretary-General*, UN document No. A/51/457, 7 October 1996, paragraph 145.
10. The International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda were established under UN Security Council resolutions 825 of 25 May 1993 and 955 of 8 November 1994, respectively.
11. For the text of the resolution, see Amnesty International, "International Standards on the Death Penalty", August 1997, AI Index: ACT 50/06/97, Appendix 11.
12. Preliminary observations of the Human Rights Committee on the third periodic report of Peru submitted under Article 40 of the Covenant, UN document No. CCPR/C/79/Add.67, 25 July 1996, paragraph 15.
13. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1994/7, 7 December 1993, paragraph 677.

14. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1996/4, 25 January 1996, paragraph 544.

15. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1997/60, 24 December 1996, paragraph 78.

16. Statement by the High Commissioner for Human Rights, 4 February 1998, UN press release.

17. See also American Convention on Human Rights, Article 9; European Convention on Human Rights, Article 7(1).

18. See also American Convention on Human Rights, Article 9.

19. Concluding observations of the Human Rights Committee on the report of Sudan submitted under Article 40 of the Covenant, UN document No. CCPR/C/79/Add.85, 19 November 1997, paragraph 8.

20. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1997/60, 24 December 1996, paragraph 91.

21. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1994/7, 7 December 1993, paragraph 686.

22. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1998/68, 23 December 1997, paragraph 117.

23. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1997/60, 24 December 1996, paragraph 81.

24. Concluding observations of the Human Rights Committee on the report of Jamaica submitted under Article 40 of the Covenant, UN document No. CCPR/C/79/Add.83, 19 November 1997, paragraph 14.

25. See also American Convention on Human Rights, Article 8(2)(h); Protocol No. 7 to the European Convention on Human Rights, Article 2.

26. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1997/60, 24 December 1996, paragraph 82.

27. See also American Convention on Human Rights, Article 4(6).

28. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1998/68, 23 December 1997, paragraph 118.

29. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1996/4, 25 January 1996, paragraph 556. See also Third Geneva Convention of 1949, Article 101; Fourth Geneva Convention 1949, Article 75.

30. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1998/68, 23 December 1997, paragraph 118.

31. This provision should be understood to apply not only to appeals to national courts, but to review by international bodies such as the Human Rights Committee set up under the International Covenant on Civil and Political Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the European Commission of Human Rights and the European Court of Human Rights. See also American Convention on Human Rights, Article 4(6).

32. *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1996/4, 25 January 1996, paragraph 556.

33. Concluding observations of the Human Rights Committee on the initial report of Nigeria submitted under Article 40 of the Covenant, UN document No. CCPR/C/79/Add.65, 24 July 1996, paragraph 16.

APPENDIX: EXTRACTS FROM INTERNATIONAL INSTRUMENTS

1. Universal Declaration of Human Rights (extracts)

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2. International Covenant on Civil and Political Rights (extracts)

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 judgment 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.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15 (extract)

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

3. American Convention on Human Rights (extract)

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be re-established in states that have abolished it.
4. In no case shall capital punishment be inflicted for political offences or related common crimes.
5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.
6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

4. African Charter on Human and Peoples' Rights (extracts)

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 7

1. Every individual shall have the right to have his cause heard. This comprises:
 - (a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - (c) the right to defence, including the right to be defended by counsel of his choice;
 - (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

5. Convention on the Rights of the Child (extract)

(Adopted by the UN General Assembly in resolution 44/25 of 20 November 1989)

Article 37

States Parties shall ensure that:

- (a) ... Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; ...

6. General comment on Article 6 of the International Covenant on Civil and Political Rights, adopted at its 378th meeting (16th session) on 27 July 1982 by the Human Rights Committee set up under the International Covenant on Civil and Political Rights (extracts)

1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). ... It is a right which should not be interpreted narrowly.

...

6. While it follows from article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes". The article also refers generally to abolition in terms which strongly suggest (paras. 2 (2) and (6)) that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life within the meaning of article 40, and should as such be reported to the Committee. The Committee notes that a number of States have already abolished the death penalty or suspended its application. Nevertheless, States' reports show that progress made towards abolishing or limiting the application of the death penalty is quite inadequate.

7. The Committee is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

7. Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in resolution 1984/50 on 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984

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 judgment 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.

8. UN Economic and Social Council resolution 1989/64, adopted on 24 May 1989

Implementation of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty

The Economic and Social Council,

Recalling its resolution 1984/50 of 25 May 1984, in which it approved the safeguards guaranteeing protection of the rights of those facing the death penalty,

Recalling also resolution 15 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Recalling further section X of Council resolution 1986/10 of 21 May 1986, in which the Council requested a study on the question of the death penalty and new contributions of the criminal sciences to the matter,

Taking note of the report of the Secretary-General on the implementation of the United Nations safeguards guaranteeing protection of the rights of those facing the death penalty,

Noting with satisfaction that a large number of Member States have provided the Secretary-General with information on the implementation of the safeguards and have made contributions,

Noting with appreciation the study on the question of the death penalty and the new contributions of the criminal sciences to the matter,

Alarmed at the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty,

Aware that effective implementation of those safeguards requires a review of relevant national legislation and the improved dissemination of the text to all persons and entities concerned with them, as specified in resolution 15 of the Seventh Congress,

Convinced that further progress should be achieved towards more effective implementation of the safeguards at the national level on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment,

Acknowledging the need for comprehensive and accurate information and additional research about the implementation of the safeguards and the death penalty in general in every region of the world,

1. *Recommends* that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution;

2. *Invites* Member States to co-operate with specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. *Also invites* Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. *Invites* Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Economic and Social Council resolution 1984/50;

5. *Urges* Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law;

6. *Recommends* that the report of the Secretary-General on the question of capital punishment, to be submitted to the Economic and Social Council in 1990, in pursuance of Council resolution 1745 (LIV) of 16 May 1973, should henceforth cover the implementation of the safeguards as well as the use of capital punishment;

7. *Requests* the Secretary-General to publish the study on the question of the death penalty and the new contributions of the criminal sciences to the matter prepared pursuant to section X of Economic and Social Council resolution 1986/10 and to make it available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

9. UN Economic and Social Council resolution 1996/15, adopted on 23 July 1996

Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty

The Economic and Social Council,

Recalling General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 and Economic and Social Council resolutions 1574 (L) of 20 May 1971, 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1990/51 of 24 July 1990 and 1995/57 of 28 July 1995,

Recalling also article 6 of the International Covenant on Civil and Political Rights,

Recalling further the safeguards guaranteeing protection of the rights of those facing the death penalty, annexed to its resolution 1984/50 of 25 May 1984, and its resolution 1989/64 of 24 May 1989, on the implementation of the safeguards,

Taking note of the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty,

Recalling the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to its resolution 1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989, and taking note of the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the death penalty contained in his report to the Commission on Human Rights at its fifty-second session,

Taking note of Security Council resolution 827 (1993) of 25 May 1993, in which the Security Council decided to establish the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and to adopt the Statute of the International Tribunal annexed to the report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993),

Taking note also of Security Council resolution 955 (1994) of 8 November 1994, in which the Security Council decided to establish the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31

December 1994 and to adopt the Statute of the International Tribunal for Rwanda, annexed to that resolution,

1. *Notes that*, during the period covered by the report of the Secretary-General on capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, an increasing number of countries abolished the death penalty and others followed a policy of reducing the number of capital offences, declaring that they had not sentenced any offender to that penalty, while still others retained it and a few reintroduced it;
2. *Calls upon* Member States in which the death penalty has not been abolished to effectively apply the safeguards guaranteeing protection of the rights of those facing the death penalty, in which it is stated that 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;
3. *Encourages* Member States in which the death penalty has not been abolished to ensure that each defendant facing a possible death sentence is given all guarantees for a fair trial, as reflected in article 14 of the International Covenant on Civil and Political Rights, and bearing in mind the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners;
4. *Also encourages* Member States in which the death penalty has not been abolished to ensure that defendants who do not sufficiently understand the language used in court are fully informed, by way of interpretation or translation, of all the charges against them and the content of the relevant evidence deliberated in court;
5. *Calls upon* Member States in which the death penalty may be carried out to allow adequate time for the preparation of appeals to a court of higher jurisdiction and for the completion of appeal proceedings, as well as petitions for clemency, in order to effectively apply rules 5 and 8 of the safeguards guaranteeing protection of the rights of those facing the death penalty;
6. *Also calls upon* Member States in which the death penalty may be carried out to ensure that officials involved in decisions to carry out an execution are fully informed of the status of appeals and petitions for clemency of the prisoner in question;
7. *Urges* Member States in which the death penalty may be carried out to effectively apply the Standard Minimum Rules for the Treatment of Prisoners, in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.

10. UN General Assembly resolution 32/61 of 8 December 1977 (extract)

Capital punishment

The General Assembly,

Having regard to article 3 of the Universal Declaration of Human Rights, which affirms everyone's right to life, and article 6 of the International Covenant on Civil and Political Rights, which also affirms the right to life as inherent to every human being, . . .

1. *Reaffirms* that, as established by the General Assembly in resolution 2857 (XXVI) and by the Economic and Social Council in resolutions 1574 (L), 1745 (LIV) and 1930 (LVIII), the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment. . .

11. UN Commission on Human Rights resolution 1998/8, adopted on 3 April 1998

Question of the Death Penalty

The Commission on Human Rights,

Recalling article 3 of the Universal Declaration of Human Rights, which affirms the right of everyone to life, article 6 of the International Covenant on Civil and Political Rights and articles 6 and 37(a) of the Convention on the Rights of the Child,

Recalling also General Assembly resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977 on capital punishment, as well as resolution 44/128 of 15 December 1989, in which the Assembly adopted and opened for signature, ratification and accession the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty,

Recalling further Economic and Social Council resolutions 1574 (L) of 20 May 1971, 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1984/50 of 25 May 1984, 1985/33 of 29 May 1985, 1989/64 of 24 May 1989, 1990/29 of 24 May 1990, 1990/51 of 24 July 1990 and 1996/15 of 23 July 1996,

Recalling its resolution 1997/12 of 3 April 1997 in which it expressed its conviction that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights,

Welcoming the exclusion of capital punishment from the penalties that the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda are authorized to impose,

Welcoming also the fact that several countries, while still keeping the death penalty in their penal legislation, are applying a moratorium on executions,

Referring to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1998/68 and Add.1-3), with respect to the Safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50,

Deeply concerned that several countries impose the death penalty in disregard of the limitations provided for in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child,

Concerned also that several countries, in imposing the death penalty, do not take into account the Safeguards guaranteeing protection of the rights of those facing the death penalty,

1. *Welcomes* the report of the Secretary-General containing information on changes in law and practice concerning the death penalty worldwide and further positive developments reflected in that report (E/CN.4/1998/82 and Corr.1);

2. *Calls upon* all States parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;

3. *Urges* all States that still maintain the death penalty:

(a) To comply fully with their obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, notably not to impose the death penalty for any but the most serious crimes, not to impose it for crimes committed by persons below eighteen years of age, to exclude pregnant women from capital punishment and to ensure the right to seek pardon or commutation of sentence;

(b) To observe the Safeguards guaranteeing protection of the rights of those facing the death penalty, set out in the annex to Economic and Social Council resolution 1984/50;

4. *Calls upon* all States that still maintain the death penalty:

(a) Progressively to restrict the number of offences for which the death penalty may be imposed;

(b) To establish a moratorium on executions, with a view to completely abolishing the death penalty;

(c) To make available to the public information with regard to the imposition of the death penalty;

5. *Requests* the Secretary-General to continue to submit to the Commission on Human Rights, in consultation with Governments, specialized agencies and intergovernmental and non-governmental organizations, a yearly supplement on changes in law and practice concerning the death penalty worldwide to his quinquennial report on capital punishment and implementation of the Safeguards guaranteeing protection of the rights of those facing the death penalty;

6. *Decides* to continue consideration of the matter at its fifty-fifth session under the same agenda item.

12. Geneva Conventions and Additional Protocols (extracts)

a. Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 (Third Geneva Convention)

Article 100

Prisoners of war and the Protecting Powers shall be informed as soon as possible of the offences which are punishable by the death sentence under the laws of the Detaining Power.

Other offences shall not thereafter be made punishable by the death penalty without the concurrence of the Power upon which the prisoners of war depend.

The death sentence cannot be pronounced on a prisoner of war unless the attention of the court has, in accordance with Article 87, second paragraph, been particularly called to the fact that since the accused is not a national of the Detaining Power, he is not bound to it by any duty of allegiance, and that he is in its power as the result of circumstances independent of his own will.

Article 101

If the death penalty is pronounced on a prisoner of war, the sentence shall not be executed before the expiration of a period of at least six months from the date when the Protecting Power receives, at an indicated address, the detailed communication provided for in Article 107.

b. Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention)

Article 68

Protected persons who commit an offence which is solely intended to harm the Occupying Power, but which does not constitute an attempt on the life or limb of members of the occupying forces or administration, nor a grave collective danger, nor seriously damage the property of the occupying forces or administration or the installations used by them, shall be liable to internment or simple imprisonment, provided the duration of such internment or imprisonment is proportionate to the offence committed. Furthermore, internment or imprisonment shall, for such offences, be the only measure adopted for depriving protected persons of liberty. The courts provided for under Article 66 of the present Convention may at their discretion convert a sentence of imprisonment to one of internment for the same period.

The penal provisions promulgated by the Occupying Power in accordance with Articles 64 and 65 may impose the death penalty on a protected person only in cases where the person is guilty of espionage, of serious acts of sabotage against the military installations of the Occupying Power or of intentional offences which have caused the death of one or more persons, provided that such offences were punishable by death under the law of the occupied territory in force before the occupation began.

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

In any case, the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence.

Article 75

In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve.

No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt by the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.

The six months period of suspension of the death sentence herein prescribed may be reduced in individual cases in circumstances of grave emergency involving an organized threat to the security of the Occupying Power or its forces, provided always that the Protecting Power is notified of such reduction and is given reasonable time and opportunity to make representations to the competent occupying authorities in respect of such death sentences.

c. The Four Geneva Conventions of 12 August 1949

Common Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

. . . (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

d. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)

Article 76(3)

To the maximum extent feasible, the Parties to the conflict shall endeavour to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants, for an offence related to the armed conflict. The death penalty for such offences shall not be executed on such women.

Article 77(5)

The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

e. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

Article 6(4)

The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

13. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

(Adopted by the UN General Assembly in resolution 44/128 of 15 December 1989)

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

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 will 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 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.

14. Protocol to the American Convention on Human Rights to Abolish the Death Penalty

(Adopted by the General Assembly of the Organization of American States at its 20th Regular Session on 8 June 1990 in Asunción, Paraguay)

Preamble

The States Parties to this Protocol,

Considering:

That Article 4 of the American Convention on Human Rights recognizes the right to life and restricts the application of the death penalty;
 That everyone has the inalienable right to respect for his life, a right that cannot be suspended for any reason;
 That the tendency among the American States is to be in favour of abolition of the death penalty;
 That application of the death penalty has irrevocable consequences, forecloses the correction of judicial error, and precludes any possibility of changing or rehabilitating those convicted;
 That the abolition of the death penalty helps to ensure more effective protection of the right to life;
 That an international agreement must be arrived at that will entail a progressive development of the American Convention on Human Rights, and
 That States Parties to the American Convention on Human Rights have expressed their intention to adopt an international agreement with a view to consolidating the practice of not applying the death penalty in the Americas,

Have agreed to sign the following Protocol to the American Convention on Human Rights to Abolish the Death Penalty

Article 1

The States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction.

Article 2

1. No reservations may be made to this Protocol. However, at the time of ratification or accession, the States Parties to this instrument may declare that they reserve the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature.
2. The State Party making this reservation shall, upon ratification or accession, inform the Secretary General of the Organization of American states of the pertinent provisions of its national legislation applicable in wartime, as referred to in the preceding paragraph.

3. Said State Party shall notify the Secretary General of the Organization of American States of the beginning or end of any state of war in effect in its territory.

Article 3

1. This Protocol shall be open for signature and ratification or accession by any State Party to the American Convention on Human Rights.

2. Ratification of this Protocol or accession thereto shall be made through the deposit of an instrument of ratification or accession with the General Secretariat of the Organization of American States.

Article 4

This Protocol shall enter into force among the States that ratify or accede to it when they deposit their respective instruments of ratification or accession with the General Secretariat of the Organization of American States.

15. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights") concerning the abolition of the death penalty

The member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

Article 1

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

Article 2

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

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

Article 4

No reservation may be made under Article 64 of the Convention in respect of the provisions of this Protocol.

Article 5

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 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

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

This 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

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

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.

Table 1. Restrictions and Safeguards on the Death Penalty

Restriction /safeguard	ICCPR	ECOSOC 1984	CR C	AC HR	AC HPR	GCs + APs	ECOSOC 1989	SR
No extension of scope				X				X
No reintroduction				X				
No retroactive use	X	X		X	X	GC IV		
Restriction to the most serious crimes	X	X		X		GC IV		X
No use against people under 18 years old at the time of the offence	X	X	X	X		GC IV AP I, II		
No use against elderly people				X			X	
No execution of pregnant women	X	X		X		AP I, II		
No execution of the insane		X						
No use against mentally retarded							X	
Right to a fair trial	X	X		X	X	GC, Art. 3	X	X
Right of judicial appeal or review	X	X		X		GC, Art. 3	X	X
Right to petition for clemency	X	X		X		GC IV	X	X
Delay between death sentence and execution						GC III, IV		X
No execution pending appeal or clemency procedure		X		X				

Abbreviations

ICCPR = International Covenant on Civil and Political Rights; **ECOSOC 1984** = Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (UN Economic and Social Council resolution 1984/50); **CRC** = Convention on the Rights of the Child; **ACHR** = American Convention on Human Rights; **ACHPR** = African Charter on Human and Peoples' Rights; **GC** = Geneva Conventions of 1949 (Nos. I, II, III, IV); **GC, Art. 3** = Geneva Conventions of 1949, common Article 3; **AP** = Additional Protocols of 1977 to the Geneva Conventions of 1949 (Nos. I, II); **ECOSOC 1989** = UN Economic and Social Council resolution 1989/64; **SR** = UN Special Rapporteur on extrajudicial, summary or arbitrary executions

Table 2. Chart of International Instruments

The following chart indicates whether the instruments and other texts referred to in this document are binding on states parties or non-binding and whether they are worldwide or regional in scope.

Instrument	Bind- ing	Non- Binding	World- wide	Regional
Universal Declaration of Human Rights		x	x	
International Covenant on Civil and Political Rights (ICCPR)	x		x	
Second Optional Protocol to ICCPR	x		x	
Convention on the Rights of the Child	x		x	
African Charter on Human and Peoples' Rights	x			x
American Convention on Human Rights (ACHR)	x			x
Protocol to ACHR to Abolish the Death Penalty	x			x
Protocol No. 6 to European Convention on Human Rights	x			x
Geneva Conventions of 1949 and Additional Protocols of 1977 (see below)	x		x	
1984 ECOSOC Safeguards		x	x	
UN resolutions, including ECOSOC resolutions on implementation of 1984 ECOSOC Safeguards		x	x	
Statements by UN Special Rapporteurs		x	x	
Comments by the Human Rights Committee established under the ICCPR		x	x	
Resolutions by Parliamentary Assembly of Council of Europe and European Parliament		x		x

The safeguards set forth in the Geneva Conventions of 1949 apply to people defined in these instruments as protected persons. Protected persons under the Third Geneva Convention are prisoners of war; those under the Fourth Geneva Convention are civilians. The safeguards in Article 3 common to the four Geneva Conventions ("common Article 3") apply in non-international armed conflicts, while the safeguards provided in other articles of the Conventions apply in international armed conflicts. The safeguards in Additional Protocol I of 1977 apply to persons in the power of a party to an international armed conflict. The safeguards in Additional Protocol II apply to persons affected by non-international armed conflicts.