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The U.N. vote on the death penalty

The U.N. has taken a significant step towards abolition of the abhorrent practice.

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This week, when it called for a world-wide moratorium on the application of the death penalty, the United Nations General Assembly took a significant step towards the definitive abolition of that sanction, thereby enhancing the protection of human rights and the inviolability of the person. The General Assembly also cast serious doubts over the death penalty's supposed deterrent effect on criminality. Moreover, it highlighted the danger of errors in the application of capital punishment and the obviously irreparable consequences of such mistakes which, as modern forensic methods have repeatedly exposed, do occur even in countries with sophisticated investigative and legal systems.

This sentiment finds echoes in every region of the world. According to Amnesty International, no fewer than 133 countries have abolished the death penalty in law or practice. And the trend continues to grow. Last July, Rwanda, a country that has suffered the ultimate crime of genocide and whose people's thirst for justice is still far from quenched, has decided to forego the ultimate sanction of capital punishment. In so doing, Rwanda has given a powerful endorsement of the importance of pursuing justice while repudiating violence to attain it.

Despite these developments and despite the fact that a small group of countries reportedly accounted for 91 per cent of the executions in 2006 — namely China, Iran, Iraq, Pakistan, Sudan, and the United States — the death penalty is still practised in too many places. Regrettably, some states that had effectively applied a moratorium on executions, such as Afghanistan in the past three years, have recently resumed them.

The death penalty must always be regarded as an extreme exception to the fundamental right to life — which is protected under international law — and must as such be interpreted in the most

restrictive manner. Accordingly, the International Covenant on Civil and Political Rights lists specific restrictions to its imposition. In particular, it states that capital punishment may be meted out only in the face of the most serious crimes and only after a trial and appeal proceedings that scrupulously respected all the principles of due process. In addition, the death penalty should always be administered in accordance with laws in force at the time of the commission of the crime. Minors and pregnant women must be spared. Human rights mechanisms have also clarified that capital punishment can neither be mandatory, nor can it be carried out in secret. Moreover, the methods of execution must meet standards of least possible physical and mental suffering.

All too often, however, the death penalty is applied in ways that violate international norms, such as the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as well as anti-discrimination standards.

Disproportionate application

This is the case, for example, in Iran with regard to the reported executions of people who were minors when the alleged crime was committed, or the stoning of offenders. Japan has recently executed an individual as old as 75 and, most worryingly, practises executions in secret and without forewarning to the persons to be executed and their families. Studies show that the death penalty is applied disproportionately to poor people in any given society. Vulnerable groups, such as migrant workers, as well as racial, ethnic or other unpopular minorities, are also often at risk.

It is therefore encouraging that higher courts, as well as legislatures, in some retentionist states are reviewing the methods and scope of capital punishment. For example, the U.S. Supreme Court has barred execution of minors and is re-examining the use of lethal injection.

At the State level this month, New Jersey abolished the death penalty thereby becoming the first American State to do so in more than 40 years. In China, a review by the Supreme People's Court has reportedly led to some reduction in the high rate of executions. In Iran, the judiciary has ordered a moratorium on stoning, although this needs to be consistently enforced.

For its part, the U.N. has long advocated abolition of the death penalty or, at a minimum and in the interim, restrictions on its use, including moratoria. Such principled position is reflected in U.N. practice as well.

Thus, the statutes of the International Criminal Tribunals for the former Yugoslavia and for Rwanda, both established by the Security Council, do not provide for capital punishment. The International Criminal Court and U.N.-supported mixed tribunals have adopted a similar stance.

If the General Assembly's call for a global moratorium is an additional and crucial stepping stone in the natural progression towards abolishing the death penalty altogether, the heart of the matter now and in the future remains in the actual implementation of this literally vital pledge.

Ultimately, it is through example that retentionist states may be persuaded to join the consensus and abandon the abhorrent practice of capital punishment. — **Courtesy: U.N. Information Centre, New Delhi.**

(Louise Arbour is U.N. High Commissioner for Human Rights.)