

Assisting Lawyers for Justice on Death Row

Issue 21

Amicus Journal

This article will examine the use of capital punishment for drug offences, and whether drug crimes meet the threshold of “most serious crimes” as interpreted under the ICCPR. It will review the legislation and practice in retentionist States, and the approach of various human rights bodies to the issue. It will examine the definition of “most serious crimes” as interpreted by various institutions, and explore whether there is indeed an international consensus that drug crimes attain this threshold of severity. Finally, it will argue that drug-related offences do not meet the threshold of “most serious crimes,” and that the execution of drug offenders violates international human rights law.

In many States, the death penalty may be applied to people in possession of illicit drugs.⁷ In countries such as Singapore and Malaysia, the burden of proof is reversed so that an individual arrested in possession of a quantity of narcotics exceeding a certain weight is presumed to be trafficking unless he/she can prove otherwise in court. This policy has been criticised by human rights monitors.⁸

In Iran, penalties for possession may be calculated cumulatively. For example, a mandatory death sentence is imposed for possession of more than 30g of heroin or 5kg opium.⁹ Under Iranian legislation, this quantity may be based upon the amount seized during a single arrest or may be cumulative. Therefore a person with several convictions for possession of smaller quantities may receive a mandatory death sentence if the sum total amount of drugs seized from all convictions exceeds the proscribed threshold.¹⁰

Many States allow for capital punishment where the offence is considered to have aggravating features, such as the use of violence¹¹ or the involvement of minors¹².

International Human Rights Law and the Interpretation of "Most Serious Crimes"

Under the ICCPR, the application of capital punishment, while not prohibited, is restricted in important ways. One key restriction is found in Article 6(2), which states that, "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes."¹³

Since the ICCPR entered into force in 1976, the interpretation of "most serious crimes" has been refined and clarified by a number of UN human rights bodies in an effort to limit the number of offences for which a death sentence can be pronounced.

For example, and these examples are not exhaustive – the Human Rights Committee has indicated that the definition of "most serious crimes" is limited to those directly resulting in death.¹⁴

Further guidance on this question is found in the reports of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, which have consistently emphasized that "the death penalty must under all circumstances be regarded as an

extreme exception to the fundamental right to life, and must as such be interpreted in the most restrictive manner possible."¹⁵

The Human Rights Committee has indicated that the definition of "most serious crimes" is limited to those directly resulting in death.

In keeping with the interpretation that capital punishment should be used only in exceptional circumstances, the Commission on Human Rights has consistently "called upon all States that still maintain the death penalty to progressively restrict the number of offences for which it could be imposed."¹⁶ For

example, in 2004, the Commission passed a resolution calling upon retentionist States parties to the ICCPR "not to impose the death penalty for any but the most serious crimes."¹⁷ The resolution further called upon States "to ensure that the notion of 'most serious crimes' does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts."¹⁸

Do drug-related offences, then, meet the threshold of "most serious crimes?" While none of the above reports and resolutions provide a definitive statement on the meaning of "most serious crimes," there are strong indications that UN human rights bodies do not consider drug crimes to meet the criteria for imposition of the death penalty.

For example, the Human Rights Committee has stated definitively that drug offences do not meet the threshold of "most serious crimes." In its 2005 Concluding Observations on Thailand, the Committee noted "with concern that the death penalty is not restricted to the 'most serious crimes' within the meaning of article 6, paragraph 2, and is applicable to drug trafficking."¹⁹ The Committee repeated this interpretation in its 2007 Concluding Observations on The Sudan, raising concern at "the imposition in the State party of the death penalty for offences which cannot be characterized as the most serious, including embezzlement by officials, robbery with violence and drug trafficking."²⁰

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has also strongly stated that drug offences do not meet the threshold of "most serious crimes," concluding in 1996 that:

the death penalty should be eliminated for crimes such as economic crimes and drug-related offences. In this regard, the Special Rapporteur wishes to express his concern that certain countries, namely China, the Islamic Republic of

Iran, Malaysia, Singapore, Thailand and the United States of America, maintain in their national legislation the option to impose the death penalty for economic and/or drug-related offences.²¹

The conclusion that drug-related offences fall outside the scope of "most serious crimes" was reaffirmed in the Special Rapporteur's 2006 Annual Report.²² More recently, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted in a 2009 report to the Human Rights Council that in his view, "drug offences do not meet the threshold of most serious crimes."²³ The UN High Commissioner for Human Rights raised similar concerns, noting in a March 2009 statement that "the application of the death penalty to those convicted solely of drug-related offences raises serious human rights concerns."²⁴

Therefore, from the perspective of the UN human rights system, there is little to support the suggestion that drug offences meet the threshold of "most serious crimes."

Do Drug Offences Meet the Threshold of "Most Serious Crimes"?

It is clear that the countries prescribing capital punishment for drug offenses believe these offenses to constitute "most serious crimes."²⁵ The Egyptian Government, for example, stated in its periodic report to the Human Rights Committee that "under Egyptian law a sentence of death may be imposed for the most serious crimes" and that "the offences punishable by death are those of a grave and serious nature."²⁶ As a country that executes drug offenders, Egypt clearly includes drug offences within this category. In 2007, the Indonesian Constitutional Court affirmed that it interpreted drug trafficking to fall within the scope of the "most serious crimes" under domestic and international law.²⁷

Some retentionist States, while not employing the specific language of Article 6(2), include drug offences within the concept of "most serious crimes" articulated within domestic penal legislation. In the Philippines, for example, drug offences are characterised as "heinous crimes," a term defined as,

grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society.²⁸

Syria lists drug offences among "extremely grave and serious crimes," and therefore subject to capital punishment.²⁹ Libya includes drug offenders among those "persons whose lives endanger or corrupt society," which therefore makes them liable for execution under Libyan law.³⁰

In addition to the interpretation of Article 6(2) in human rights law, which has already been explored, there are a number of other means by which to measure the international community's perspective on drug crimes, and to assess whether there is indeed a consensus that they represent "most serious crimes" for the purposes of implementing capital punishment. These include examinations of domestic drug legislation among retentionist States, international narcotics control treaties, international refugee law and the Rome Statute of the International Criminal Court.

Drug Crimes as Capital Crimes in Domestic Legislation

A review of domestic legislation reveals a remarkable lack of consistency in the application of capital punishment for drug crimes. In 1995, the UN Secretary-General's fifth quinquennial report on the death penalty noted that the threshold for a capital drug offence among retentionist States ranged from the possession of 2g to the possession of 25,000g of heroin.³¹ Identifying a credible definition of "most serious crime" within such a range is a difficult, if not impossible, exercise.

One illustration of this is found in comparing the neighbouring States of India, Pakistan, Sri Lanka and Bangladesh, a region described by both a Bangladeshi Minister of Home Affairs and an Indian representative to the UN as a transit route between the two major opium producing areas of the "Golden Triangle" and the "Golden Crescent."³² Under Sri Lanka's *Poisons, Opium, and Dangerous Drugs (Amendment) Act of 1984*, the death penalty may be applied for trafficking, importing/exporting or possession of only 2g of heroin.³³ Yet a conviction for possessing that same quantity of heroin in Bangladesh, Pakistan or India – where the death penalty is prescribed for possession of 25g,³⁴ 100g³⁵ and 1,000g³⁶ respectively – would not nearly approach the level of a capital offence. A similar disparity is found in the threshold for opium. Pakistan, the most restrictive of these jurisdictions in this regard, prescribes the death penalty for possession of over 200g,³⁷ a quantity far smaller than in the legislation of Sri Lanka (500g³⁸), Bangladesh (2,000g³⁹) or India (10,000g⁴⁰).

This inconsistent approach to the definition of capital drug offences among retentionist States is in itself perhaps the strongest illustration that the extension of the death penalty to narcotics is at best an arbitrary exercise. The lack of any coherent threshold for a capital drug offence among these States – as well as the wide variety of offences for which death is prescribed – demonstrates that there is not even consensus among retentionist countries about which drug crimes constitute “most serious crimes.”

Drug Crimes as “Particularly Serious” Crimes in International Narcotics Control Treaties

The international framework for drug prohibition is defined by three UN treaties: the Single Convention on Narcotic Drugs of 1961 (as amended by the 1972 Protocol),⁴¹ the 1971 Convention on Psychotropic Substances⁴² and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.⁴³ In examining the issue of the death penalty, the 1988 Convention is most relevant as it represents “the culmination of the UN’s multilateral efforts to combat illicit trafficking in drugs and drug abuse”⁴⁴ and “firmly establishes a system of international criminal drug control law that uses criminalization and penalization to combat global drug trafficking.”⁴⁵

The Preamble of the 1988 Convention describes drug trafficking as “an international criminal activity” demanding “urgent attention and the highest priority” of States parties.⁴⁶

[t]he illicit production of, demand for and traffic in narcotic drugs and psychotropic substances...[pose] a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society.⁴⁷

To address this shared concern,

The purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension.⁴⁸

Article 3 proscribes a wide range of activities related to the production, cultivation, trafficking, transportation, possession or purchase of illegal narcotics, as well as other offences related to laundering of proceeds from the drug trade.⁴⁹ Article

3 makes clear that while the Convention considers all of these offences as “grave”⁵⁰ and “serious”⁵¹ in nature, there are additional aggravating elements that may elevate these “serious” offences to the level of “particularly serious.” These aggravating factors include participation with domestic or international organised crime groups, the use of violence or firearms, the involvement of minors and/or the collaboration of public officials.⁵²

Absent these aggravating factors, none of the “serious” offences prescribed in Article 3 of the 1988 Convention satisfy the “most serious crimes” threshold of international human rights law, as they do not even meet the highest threshold of criminality within the international narcotics control regime itself. As described by Gottwald, the 1988 Convention:

[e]stablishes a seriousness hierarchy of drug offences, with “criminal offences” (for personal use) as the least serious offences at the bottom, “serious criminal offences” (for trafficking purposes) in the middle and “particularly serious offences” (for trafficking purposes) at the top.⁵³

Based upon the 1988 Convention’s Preamble and provisions on “particularly serious” offences, Gottwald concludes, “[i]nternational, large-scale activities carried out with organized criminal groups are [the] factors that make drug offences most serious.”⁵⁴

Given this analysis, it is clear that even within the Convention’s own terms of reference, the number and type of drug-related offences that can be characterised as most egregious within a narcotics control framework are extremely limited. The vast majority of capital drug offences enshrined in domestic legislation are either too narrow in scope, too small in quantity or too informal in criminal organisation to satisfy the criteria of the most severe crimes, even within the drug control framework. Therefore, most drug offences for which the death penalty is prescribed in national legislation are by definition not “most serious crimes,” even before international human rights law considerations are brought into the equation.

That said, each of the three drug conventions contains articles that allow for States Parties to adopt “more strict or severe measures”⁵⁵ than those provided for in the treaties themselves. Whether these stricter measures include capital punishment is unclear in the official Commentaries on the treaties, although these do suggest an evolving international opinion against the use of the death penalty for drug offences.

Both the Commentaries for the 1961 and 1971 drug conventions use the example of the imposition of the death penalty rather than imprisonment to illustrate what would be "permissible substitute controls"⁵⁸ under the relevant articles; that is, sanctions more severe than those specified in the treaties. However, in each case, the Commentaries qualify these illustrative examples.⁵⁹

At the very least, the apparent contradictions between the text and the footnotes in each case reveal a lack of consensus on the status of the death penalty as a legitimate sanction. They may also be reflective of an evolving international perspective away from the appropriateness of the death penalty as a permissible sanction, an argument bolstered by the fact that the Commentary to the 1988 Convention excludes any mention at all of the death penalty as an example of a "permissible sanction" under Article 24.⁶⁰

Drug Crimes as "Serious Non-political Crimes" in International Refugee Law

International refugee law provides another lens through which to examine the international community's approach to drug crimes, and assess whether such offences meet the threshold of "most serious crimes."

In this case, the relevant assessment tool is Article 1F of the 1951 *Convention Relating to the Status of Refugees*. Article 1F contains what are known as "exclusion clauses," or provisions under which certain persons can be denied the benefits of refugee protection.⁶¹ According to the Office of the UN High Commissioner for Refugees (UNHCR), "[t]he rationale for the exclusion clauses . . . is that certain acts are so grave as to render their perpetrators undeserving of international protection as refugees."⁶² Under Article 1F,

[t]he provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the

purposes and principles of the United Nations.⁶³

For the purpose of considering the question of "most serious crimes," Article 1F(b) and 1F(c) are useful as both have been engaged by courts and refugee tribunals to examine the issue of drug-related offences.

The relevant interpretative documents are the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention*; the updated *Guidelines on International Protection* on the application of exclusion clauses issued in 2003, and the *Background Note* on the application of Article 1F issued the same year.

Although sometimes claimed otherwise, the UNHCR does not take a position on whether drug trafficking *per se* meets the threshold of "serious non-political crime," as neither the UNHCR Handbook, the UNHCR Guidelines nor the UNHCR Background Note cite it as an example of such. This appears to be a point of some confusion and misinterpretation, as some of the case law – particularly the Canadian jurisprudence⁶⁴ – incorrectly claims that the UNHCR identifies drug trafficking among "serious non-political crimes," and therefore a basis for execution.

Drug Crimes as "Most Serious Crimes" Under the Rome Statute

Another opportunity to assess the international community's perspective on drug crimes, and whether they constitute "most serious crimes," is found in the attempts to have drug trafficking included as an international crime under the jurisdiction of the Rome Statute of the International Criminal Court (ICC).

According to Schabas, the concept of "international crimes" has existed for centuries, and has typically been used to describe "offences whose repression compelled some international dimension . . . [and] necessitated special jurisdictional rules as well as cooperation between States."⁶⁵

The Rome Statute of the ICC specifies that the Court's jurisdiction "shall be limited to the most serious crimes of concern to the international community as a whole," and identifies these "most serious crimes" as genocide, crimes against humanity, war crimes and the crime of aggression.⁶⁶ Says Schabas,

[t]he crimes over which the International

Criminal Court has jurisdiction are "international" not so much because international cooperation is needed for their repression . . . but because their heinous nature elevates them to a level where they are of "concern" to the international community.⁶⁵

Do drug crimes meet this threshold? Efforts to have drug offences included within the remit of the international court were initiated by various Caribbean States. But they were ultimately unsuccessful, and the issue was referred to the Review Committee for later consideration.⁶⁶

The failure of the international community to support the inclusion of drug offences as "most serious crimes" under the Rome Statute is a clear indication of a lack of consensus on the definition of drug crimes. Robinson concludes, "[d]espite universal concern about drug trafficking and drug abuse . . . there can be little doubt that . . . [drug crimes] are not crimes under customary international law."⁶⁷ Yarnold further concludes that despite the international concern over drugs, "[d]rug offenses neither present a threat to world peace nor do they 'shock the conscience' of the world community."⁶⁸ Even Geraghty, who argues in favour of elevating drug trafficking to the level of an international crime, notes "there is certainly no general consensus that drug trafficking should be afforded universal jurisdiction"⁶⁹ and concludes; "there is simply not enough evidence of state practice and *opinio juris* to assert that drug trafficking is currently a universal jurisdiction crime as a matter of customary international law."⁷⁰

The drafting process of the Rome Statute therefore provides further evidence that no international consensus exists that drug offences constitute "most serious crimes." Absent this consensus, the suggestion that drug offences meet the threshold of severity justifying execution

under international human rights law is not supported.

Conclusion

While retentionist States argue that drug offences meet the threshold of "most serious crimes" under Article 6(2) of the ICCPR – and suggest the international community shares this assessment – there is little evidence to support this. On the contrary, an examination of this question from a variety of perspectives shows that at best no international consensus exists on this issue, and at worst the execution of drug offenders is in clear violation of international law. By carrying out death sentences under such dubious legal circumstances – circumstances that fail to observe the basic safeguards in human rights law – retentionist States who execute drug offenders do so in situations likened by a UN Special Rapporteur to summary or arbitrary executions.⁷¹

The suggestion that drug offences meet the threshold of severity justifying execution under international human rights law is not supported.

This regressive trend in capital punishment highlights an area of needed focus for abolitionists, and exposes a neglected area of human rights discourse generally. Addressing this situation through established international mechanisms is complicated by the inherent conflict faced by the United Nations as the international organisation tasked with both promoting human rights globally

while at the same time promoting international narcotics control and enforcement.

If the progress towards the abolition of capital punishment is indeed a dramatic example of the success of human rights law, then the expansion of capital punishment for narcotics illustrates an example of a dramatic failure. This situation demands attention not only among abolitionists, but indeed points to the need for the human rights movement to speak out on State abuses in the name of drug enforcement.

- ¹ Amnesty Int'l, *Abolitionist and Retentionist Countries* (Mar. 31, 2009), <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries>; WILLIAM A. SCHABAS, *THE ABOLITION OF THE DEATH PENALTY IN INTERNATIONAL LAW* 20 (2002).
- ² Government of Singapore, *Letter dated 27 June 1997 from the Permanent Mission of Singapore to the United Nations Office at Geneva addressed to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, at para. 3, U.N. Doc. E/CN.4/1998/113 (Dec. 5, 1997).
- ³ Edith Yunita Sianturi, Rani Andriani (Melisa Aprilia), Myuran Sukumaran, Andrew Chan, Scott Anthony Rush 2-3/PUU-V/2007 [2007] IDCC 16 (Oct. 30, 2007).
- ⁴ In 2001, the United Nations Commission on Crime Prevention and Criminal Justice identified the Bahrain, Bangladesh, Brunei Darussalam, China, Cuba; Democratic Republic of Congo, Egypt, Guyana, India, Indonesia, Iran, Iraq, Jordan, Kuwait, Libya, Malaysia, Myanmar, Oman, Pakistan, Philippines, Qatar, South Korea, Saudi Arabia, Singapore, Sri Lanka, Sudan, Syrian Arab Republic, Taiwan, Tajikistan, Thailand, United Arab Emirates, the United States (federal law) Uzbekistan and Viet Nam as those countries with capital punishment for drug crimes. Commission on Crime Prevention and Criminal Justice, *Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, at para. 90, U.N. Doc. E/CN.15/2001/10 (Mar. 29, 2001). Since this report was published, the Philippines has abolished the death penalty, and Amnesty International has judged South Korea, Brunei Darussalam, Myanmar and Sri Lanka to be abolitionist in practice. Amnesty Int'l, *Death Penalty: Countries Abolitionist in Practice* (Mar. 31, 2009), <http://www.amnesty.org/en/death-penalty/countries-abolitionist-in-practice>. However, the above list does not include Yemen and Laos, both of which have capital punishment for drug offences 'ANGD: Record of Success' Yemen Times (29 June – 2 July 2006) issue 959 vol 14.; Amnesty Int'l, *UN Anti-Drugs Day: Death Sentences for drug-crimes rise in the Asia Pacific*, AI Index ASA/01/02/2007 1, Jun. 28, 2007.
- ⁵ Roger Hood, *THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE* 81 (2002).
- ⁶ See Amnesty Int'l, *Amnesty International Report 2004*, AI Index POL 10/004/2004, 2004 at 301; Amnesty Int'l, *Singapore – The death penalty: A hidden toll of executions*, AI Index ASA 36/001/2004, Jan. 15 2004.; *China executes 64 to mark UN anti-drug day*, Associated Press, June 27 2002.; CS Ling, *Debate over the death penalty heating up*, New Straits Times, Mar. 26 2006.; U.N. Human Rights Committee, *Comments by the Government of Viet Nam on the concluding observations of the Human Rights Committee*, at para. 1, U.N. Doc. CCPR/CO/75/VNM/Add.2 (July 21 2003).;
- ⁷ The Narcotic Drugs and Psychotropic Substances (Amendment) Act 1988, No 2. of 1989, § 9. (India).; The Comprehensive Dangerous Drugs Act of 2002, Rep. Act No. 9165, § 11. (Phil.).
- ⁸ "[T]he Special Rapporteur wishes to express his concern about the existence of laws, particularly those relating to drugs offences in countries such as Malaysia and Singapore, where the presumption of innocence is not fully guaranteed, as the burden of proof lies partially on the accused." U.N. Commission on Human Rights, *Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74*, at para. 81, U.N. Doc. E/CN.4/1997/60 (Dec. 24, 1996).
- ⁹ Anti-Narcotic Drug Law of 25 October 1988, as amended on 1st July 1989, at arts 8(6), 4(4) (Iran).
- ¹⁰ *Id.* at arts. 6, 8(6).
- ¹¹ Decision on the Prohibition of Narcotic Drugs (adopted at the 17th Meeting of the Standing Comm. Seventh Nat'l People's Cong., Dec. 28, 1990), § 2, translated by the U.N. Office on Drugs and Crime (P.R.C.); Anti-Narcotic Drug Law.
- ¹² Law No. 122 of 1989, amending certain provisions of Decree-Law No. 182 of 1960 concerning the Control of Narcotic Drugs and Regulation of their Utilization and Trade in Them, art. 34(c)(i) (Egypt); Law No. 11 of 1988 Law on Narcotic Drugs and Psychotropic Substances, arts. 8(b)(iii), 9(c)(iii) (Jordan).
- ¹³ International Covenant on Civil and Political Rights art. 6(2), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter "ICCPR"].
- ¹⁴ U.N. Human Rights Committee, *Concluding observations of the Human Rights Committee: Iran*, at para. 8, U.N. Doc. CCPR/C/79/Add.25 (July 29, 1993).
- ¹⁵ U.N. Commission on Human Rights, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution*, at para. 55, U.N. Doc. E/CN.4/2005/7 (Dec. 22, 2004).
- ¹⁶ U.N. Commission on Human Rights, at para.16.
- ¹⁷ U.N. Commission on Human Rights, *Question of the Death Penalty: Commission on Human Rights Resolution 2004/67*, at para. 4(d), U.N. Doc. E/CN.4/2004/127 (Apr. 21, 2004).
- ¹⁸ *Id.* at para. 4(f).
- ¹⁹ U.N. Human Rights Committee, *Concluding observations of the Human Rights Committee: Thailand*, at para. 14, U.N. Doc. CCPR/CO/84/THA (July 8, 2005).
- ²⁰ U.N. Human Rights Committee, *Concluding observations of the Human Rights Committee: The Sudan*, at para. 19, U.N. Doc. CCPR/C/SDN/CO/3 (Aug. 29, 2007).
- ²¹ U.N. Commission on Human Rights, *Report by the Special Rapporteur, Mr. Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1996/74*, at para 91, U.N. Doc. E/CN.4/1997/60 (Dec. 24, 1996).
- ²² U.N. Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, at paras. 51-52, U.N. Doc. A/HRC/4/20 (Jan.29, 2007).
- ²³ U.N. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, at para. 66, U.N. Doc. A/HRC/10/44 (Jan. 14, 2009).
- ²⁴ Press Release, High Commissioner calls for focus on human rights and harm reduction in international drug policy (Mar. 10, 2009), Office of the High Commissioner for Human Rights.
- ²⁵ *The combined third and fourth periodic reports of Egypt submitted to the Human Rights Committee*, at para 270, U.N. Doc. CCPR/C/EGY/2001/3 (Apr. 15, 2002).
- ²⁶ *Id.* at para. 271.
- ²⁷ Edith Yunita Sianturi, *supra* note 3.
- ²⁸ U.N. Human Rights Committee, *Second periodic report: The Philippines*, at para. 497, U.N. Doc. CCPR/C/PHL/2002/2 (Sept. 18, 2002). Offences categorised as "heinous crimes" under the legislation include importation of prohibited drugs; maintenance of a den, dive or resort for prohibited

drug users or for regulated drug users, when the prohibited or regulated drug is administered, delivered or sold to a minor who is allowed to use such den, dive or resort or when the prohibited or regulated drug is the proximate cause of the death of a person using the same in such den, dive or resort; cultivation of plants which are sources of prohibited drugs; sale, administration, dispensation, delivery, transportation and distribution of regulated drugs, when the victim of the offense is a minor or should a regulated drug involved in the offense be the proximate cause of the death of a victim, *Id* at para 502.

- ²⁹ *Comments by the Government of the Syrian Arab Republic on the concluding observations of the Human Rights Committee: Syrian Arab Republic (Follow-up Response by State Party)*, at para. 11, U.N. Doc. CCPR/CO/71/SYR/Add.1 (May 28, 2001).
- ³⁰ *Third periodic reports of States parties due in 1995: Libyan Arab Jamahiriya*, at para 125(c), U.N. Doc. CCPR/C/102/Add.1 (Nov. 29, 1995).
- ³¹ The Secretary General, *Report of the Secretary-General: Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, at para. 55, U.N. Doc. E/CN.15/2001/10 (2001).
- ³² Press Release, General Assembly Plenary GA/9416 Twentieth Special Session 4th Meeting, Effects of Globalization Market Liberalization Poverty on World Drug Problem among issues raised at Assembly Special Session (June 9, 1998); G.A. Sixth Committee (44th Session), *Summary Record of the 39th Meeting*, at para. 34, U.N. Doc. A/C.6/44/SR.39 (Nov. 13, 1989).
- ³³ Poisons Opium and Dangerous Drugs (Amendment) Act No. 13 of 1984, § 54(a) (Sri Lanka).
- ³⁴ The Narcotics Control Act, 1990, § 19 (Bangladesh).
- ³⁵ Ordinance No. XLVII of 1995, an Ordinance, § 9 (Pakistan).
- ³⁶ Narcotic Drugs and Psychotropic Substances (Amendment) Act 1988 (Act No. 2 of 1989) (India) § 9.
- ³⁷ Ordinance No. XLVII of 1995, *supra* note 35, § 9.
- ³⁸ Poisons Opium and Dangerous Drugs Act, *supra* note 32, § 54(a).
- ³⁹ The Narcotics Control Act, *supra* note 34, § 19.
- ⁴⁰ Narcotic Drugs and Psychotropic Substances (Amendment) Act 1988, *supra* note 36, § 9.
- ⁴¹ Single Convention on Narcotic Drugs 1961 (as amended by the 1972 Protocol), Mar. 30, 1961, U.N.T.S. vol. 520 No. 7515 [hereinafter "Single Convention"].
- ⁴² 1971 Convention on Psychotropic Substances, Feb. 21, 1971, U.N.T.S. vol. 1019 No. 14956 [hereinafter "1971 Convention"].
- ⁴³ U.N. Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, Dec. 20, 1988, U.N.T.S. vol. 1582 No. 27627 [hereinafter "Trafficking Convention"].
- ⁴⁴ Patrick Robinson, *The Missing Crimes*, in *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY VOLUME I*, 506 (A. Cassese, P. Gaeta, J. Jones eds., 2002).
- ⁴⁵ Martin Gottwald, *Asylum Claims and Drug Offences: The Seriousness Threshold of Article 1F(b) of the 1951 Convention Relating to the Status of Refugees and the UN Drug Conventions*, 18 Int'l J. Refugee L. 81, 93 (2006).

⁴⁶ Trafficking Convention, *supra* note 43, preamble.

⁴⁷ *Id.*

⁴⁸ *Id.* art. 2(1).

⁴⁹ *Id.* art. 3(1).

⁵⁰ *Id.* art. 3(4)(a).

⁵¹ *Id.* art. 3(7).

⁵² *Id.* art. 3(5).

⁵³ Gottwald, *supra* note 45, at 99.

⁵⁴ *Id.* at 117.

⁵⁵ Single Convention, *supra* note 41, art. 39; 1971 Convention, *supra* note 42, art. 23; Trafficking Convention, *supra* note 43, art. 24.

⁵⁶ *Commentary on the Single Convention on Narcotic Drugs*, 1961, at 429, U.N. Doc. E.73.X.1 (Aug. 3, 1962) [hereinafter "1961 Commentary"] at 449-450; *Commentary on the Convention on Psychotropic Substances*, at 370, U.N. Doc. E.76.XI.5 (Feb. 21, 1971) [hereinafter "1971 Commentary"].

⁵⁷ 1961 Commentary, *supra* note 56, at 450 fn 3; 1971 Commentary, *supra* note 56, at 370 and fn 1189.

⁵⁸ *Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances*, at 49, U.N. Doc. E/CN.7/590 (Dec. 20, 1988) at 390-392.

⁵⁹ Protection Policy and Legal Advice Section, Department of International Protection, United Nations High Commission for Refugees, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*, 15 Int'l J. Refugee L. 502, para 1 (2003) [hereinafter "UNHCR Background Note"].

⁶⁰ Office of the United Nations High Commissioner for Refugees, *Guidelines on International Protection—Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, at para. 2, U.N. Doc. HCR/GIP/03/05 (Sept. 4, 2003) [hereinafter "UNHCR Guidelines"].

⁶¹ U.N. Convention relating to the Status of Refugees art 1F, July 28, 1951, 189 U.N.T.S. 150 [hereinafter "Refugee Convention"].

⁶² Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 982 at para 73; Chan v. Canada (Minister of Citizenship and Immigration), [2000] 4 F.C. 390, para 5; Zrig v. Canada (The Minister of Citizenship and Immigration), [2001] 2001 F.C.T. 1043, para 65.

⁶³ WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 26 (2004).

⁶⁴ Rome Statute of the International Criminal Court art. 5(1), July 1, 2002, U.N. Doc. 2187, U.N.T.S. 90.

⁶⁵ *Id.*

⁶⁶ Robinson, *supra* note 44, at 505.

⁶⁷ *Id.* at 507.

⁶⁸ Barbara M. Yarnold, *Doctrinal Basis for the International Criminalization Process*, 8 Temple I.C.L.R. 85, 103 (1994).

⁶⁹ Ann H. Geraghty, *Universal Jurisdiction and Drug Trafficking: A Tool for Fighting One of the World's Most Pervasive Problems*, 16 Fla. J. Int'l L. 371, 374, 388 (2004).

⁷⁰ *Id.* at 391.

⁷¹ U.N. Commission on Human Rights, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, at para. 48, U.N. Doc. E/CN.4/2004/7 (Dec. 22, 2003), at para. 48.