



# The Evolution of the Abolition of the Death Penalty by International Human Rights Law in the United Nations

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**Abstract:** *The death penalty, as the oldest and most severe punishment method, originated in the later period of primitive society with the emergence of the state, it can be seen as a tool for maintenance of society. Looking back at the history of human punishment, the first thought should be the death penalty because of obvious characteristics, such as irreversibility. The kind of features can help researchers find the nature of the death penalty, not only can explore the value and meaning of the existence of the death penalty, also can find the necessity of abolishing the death penalty. The death penalty was rarely criticized in the 17th century, however, with the progress of human society and the development of social civilization, international community began to recognize the cruelty character of the death penalty in the eighteenth century. In 1764, the Italian criminal law scholar Beccaria advocated the abolition or limit the application of the death penalty for the first time, this idea used the social contract theory as the theoretical pillar and started from the bourgeois humanitarian standpoint. Therefore, the discussion of the death penalty was launched, and some countries began to abolishing the death penalty in the practice of criminal legislation. The death penalty as an ancient criminal law which has existed for a long time, it is disputed in the United Nations because of the deprivation of the right to life and the destruction of human rights, and the discussion of abolishing the death penalty have never stopped in the United Nations.*

**Keywords:** International human rights law; Abolishment; The Death penalty; The United Nations.

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## 1. Introduction

The abolition of the death penalty has become a worldwide controversial topic, the United Nations has been committed to abolishing the death penalty for a long time, it has passed a series of international conventions and resolutions to declare its basic position about the death penalty, which is that the United Nations intends to promote the process of abolishing the death penalty around the world. Due to the contributions made by the United Nations, the number of states using the death penalty is continuing to decline on the whole in the recent years. More than two-thirds of countries have abolished the death penalty for ordinary crimes or de facto abolished that. For the reason that the increasing number of states realize the significance of human rights and they also start to pay attention to the view of humanity. There is no doubt that the death penalty is moving in the direction of the demise, abolishing the death penalty has become an international trend. In fact, the limitation and abolition of the death penalty were started at the post-Second World War essentially, for the reason that the wound was produced by the Second World War, the international community realized the value and significance of human life, and the protection of human rights were started. As an aim for developing the civilization, abolishing the death penalty was promoted in the period of drafting the Universal Declaration of Human Rights in 1948. At that time, in addition to a few countries, other countries continue to retain the death penalty. Although the efficiency made by the Universal Declaration of Human Rights was not obvious in the area of abolishing the death penalty, it came up with the view of absolute right of life and made a standard to the later treaties and conventions which relation to the death penalty in the area of the international human rights law. With the evolution and development of human civilization, the United Nations have always seen the protection of human rights and the right to life as an important part of work.

In this paper, the attitude of the evolution of the United Nations on the death penalty will be seen as a clue, relevant international human rights laws and regulations on the abolition of the death penalty will be used as object of study to analyze the development of the prohibition of the death penalty.

Although the achievements of the revolution conducted by the United Nations is conspicuous and the trend of

abolishing the death penalty will continue, there are still exist two opposite parties in legal profession, which are the party of abolishing the death penalty and retaining the death penalty . However, according to the current international human rights law trend, the party who support to abolish the death penalty is obviously favourable in the United Nations, although there are minority states who has influential position in the United Nations still existing the death penalty in the domestic law, such as China, Japan and American. Achievements of abolishing the death penalty is inseparable from the effort from the United Nations and international human rights law. The right to life as the most basic content of the human rights system, some international human rights organizations began to use the existence or abolishment of the death penalty as a measure to evaluate development situation of human rights protection in a state. In this case, the relationship between human rights and the death penalty is significant to analyze the evolution of abolishing the death penalty in the United Nations.

## **2. The Closed Relationship between the Death Penalty and Human Rights Law**

International human rights law plays a significant role in the process of abolishing the death penalty in the United Nations. The attitude of international human rights law to the death penalty has gone from laissez-faire to limit, and finally to abolition. The purpose of the Universal Declaration of Human Rights is to appeal for peace, freedom and human rights, there is no direct concern about the death penalty. However, it is a start to concern the field of protecting the right of life, it provides that ‘Everyone has the right to life, liberty and security of person’. In addition, Article 5 provides that ‘no person shall be subjected to torture or to cruel, inhuman or insulting treatment or punishment’. At that time, only 14 countries in the world abolished the death penalty, the concept of abolishing the death penalty has not been widely disseminated and focused. In 1996, the United Nations adopted the International Convention on Civil and Political Rights, which marks the attitude of the international human rights movement to the death penalty from tolerance to restrictions. The Convention defines the right to life and imposes restrictive provisions on the use of the death penalty in countries around the world. Article 6 provides that the right to life of each person should be protected by law and cannot be arbitrarily deprived. But also made a provision to the countries which still exit the death penalty, the death penalty can only be sentenced to the most serious punishment. Furthermore, the Second Protocol to the International Covenant on Civil and Political Rights has made an important complement to the ICCPR and has added more obligations to States parties. Its clear orientation is the abolition of the death penalty in the world. In some ways, the process of improving the international human rights law can also be seen as the process of abolishing the death penalty.

Before explores of the revolution of the death penalty in the United Nations by international human rights law, the relationship between the death penalty and the human rights protection should be clear. For the reason that the death penalty is abolished mostly through the international human rights law in the United Nations. Understanding the concept of human rights is a logical starting point for recognizing the relationship between the death penalty and human rights law. Although human rights seem simple, it is defined differently by different scholars. Some scholars believe that human rights is an effective moral requirement, it is derived from the subjective needs of mankind. There are also scholars who believe that human rights are exclusively human beings and the owner can only be human, so that everyone has human rights. Therefore, most scholars hold the point of view that human rights are inherent with the natural characteristics, it is a moral level right. In addition, based on the Universal Declaration of Human Rights in 1948, life is always free, equal and everyone can enjoy life, freedom and personal safety.

Although there are different definitions of human rights, the most important content of human rights is the right to life. It is precisely because of the existence of the right to life, the problem of the abolition or retention of the death penalty has become the opposite of human rights protection. In the process of the abolition of the death penalty in the United Nations, there are two different views on the death penalty, which makes the process of abolition of the death penalty is long and bumpy in the United Nations. In fact, each type of punishment has its own existence value based on different social background and demand. The existence of the death penalty is also based on a certain demand. Whether it is the death penalty abolitionists or the death penalty retainers can be based on the value of the death penalty to find a basis for their view. The relationship between the death penalty and the human rights law from the perspective of value is not only the key to understanding the arguments of the death penalty, but also can help to understand the difficult choice of international human rights law made based on the protection of human rights in the process of promoting the abolition of the death penalty. The focus of discussion on the value of a penalty is whether the penalty is conducive to the maintenance of social order, whether it contributes to social equity and the realization of individual freedom, as well as the value analysis of the death penalty. Firstly, the supporters deny the significant role played by death penalty for the social order and crime prevention. They believe that the death penalty deprives the criminal’s lives, and it cannot be retrieved. It can stop the crime made by a

special person, but there are still others can make the same crime. Some scholars compare the crime rate between different countries which include the countries abolished the death penalty and retained the death penalty, they found that the effective of the death penalty in the area of controlling crime rate is unobvious. In addition, they also found that the crime rate is no obviously reduce in the different periods of the retention and abolition of the death penalty. Moreover, through a series of studies, researchers found that countries which retain the death penalty still have high crime rate, such as India. However, the crime rate of some countries which exist the death penalty reduced in recent years, such as China. But the real cause of crime reduction is the improvement of education and social progress, the death penalty did not effectively reduce that. In addition, execution do not mean the termination of crime, it cannot stop crimes through the root of problem.

On the other hand, the Retentionist demonstrated the important role of the death penalty in the aspect of maintaining social order, achieving social equity and personal freedom from the same value perspective. They argue that the death penalty is thorough in pre-venting the perpetrators of recidivism, and the death penalty has the greatest deterrent in the social sphere, the existence of the death penalty is significance to the maintenance of the legal order. Secondly, the death penalty is mainly aimed at the sinful people, it reflects the revenge to the criminals and the equivalence of life, which is an important means to protect social justice. Moreover, the freedom of human should be limited in society, each person has the obligation in society, the realization of a person's rights and interests must be based on respect for others and does not hinder the interests of others. The death penalty as a means of punishment for offenders under certain conditions does not constitute aggression upon one's right, but rather the respect and protection of citizens' right to life in another way, it is also conducive to the real realization of human freedom. Thus, there is an interesting phenomenon in the controversy over the abolition of the death penalty: the death penalty abolitionists and the death penalty retainers get very different contradictory conclusions from the same point of view in order, fairness and personal freedom with the different relevant evidence.

It can be said that if only from these points of view, it is difficult to absolutely say that the death penalty should be retained or completely abolished. From analysis of these view, we can find that the theoretical basis between the two factions often coincides with the phenomenon, but the analysis is different. The death penalty abolitionists are choosing the most reliable and most favorable human rights theory to support the point of view base on the situation. The theory of human rights advocates respect for life, which shows that deprivation of life is a violation of human rights and humanitarianism in all respects. With the popularization of human rights theory and the penetration of human rights concept, the protection of human rights began to become the development direction of modern criminal law, criminalization of punishment has become one of the values of modern criminal law . Therefore, in the debate on the abolition of the death penalty, only the adherence to human rights theory can make the death penalty abolitionist argument more convincing. To sum up, in the debate on the abolition of the death penalty, the analysis of the value of death penalty around the discussion is the focus of debate be-tween the two sides, but also the starting point for the study of this argument. In the continuous development of controversy, the human rights theory as a debate basis is the ad-vantage of death penalty abolitionists. The point of protection of human rights is the main force to shake the status of death in the penalty system, it is also the point of convergence between the international human rights law and the death penalty. In addition, the controversy over the abolition of the death penalty is clearly reflected in the development of international human rights law.

Although the death penalty presents different characteristics with social progress at different stages of human development, the value of human rights protection leads the death penalty to the direction of complete abolition. But there is a same characteristic reflected in different periods and different societies, which is the inhuman behavior, and there is also a direct contradiction between the existence of the death penalty and human rights protection. This contradiction makes the international community always pay attention to the issue of the death penalty after the end of Second World War. It also led to the birth of a new international law department, namely international human rights law, afterwards, human rights protection get the legal support. The development of things is always long and tortuous, as the process of the international human rights law. In 1945, the Charter of the United Nations raised the issue of fundamental human rights protection into the purposes and beliefs of the United Nations, and established the Commission on Human Rights. Since then, the United Nations has adopted a number of declarations, treaties, resolutions and other human rights protection documents. One of the common features of international human rights law promulgated by the United Nations is the first place in protecting the right to life, and the issue of death penalty has received increasing attention as a result of these documents. It can be said that the link of the death penalty and international human rights law is a huge thrust of the development of human rights.

In international human rights law, the recognition of the right to life in the Universal Declaration of Human Rights

has greatly contributed to the development of international human rights law and the modern abolition of the death penalty movement. Therefore, the International Covenant on Civil and Political Rights, which was formally in force in 1976, defined the idea of abolishing the death penalty, which practiced the spirit of the abolition of the death penalty conveyed in the Universal Declaration of Human Rights. In addition, the Second Optional Protocol of the International Covenant on Civil and Political Rights considers that the abolition of the death penalty contributes to the improvement of human dignity and the promotion of the sustainable development of human rights, and it does not disguise the strong desire to abolish the death penalty roundly in the United Nations. International human rights law and the United Nations attitude towards the death penalty is going to be increasingly rational and resolute. The United Nations has demonstrated the development of human rights and the death penalty to the international community through various treaties and resolutions. In the latter part of the article, the more detailed and comprehensive analysis and summary of the most representative and influential legal provisions of the United Nations in the area of international human rights law will be represented.

### **3. Measures and Efforts of the United Nations to the Abolition of the Death Penalty**

The process of abolishing the death penalty in the United Nations can be broadly divided into three phases: The first step is the adoption of the Universal Declaration of Human Rights, which is the start of the consideration of human rights. The second step is the adoption of the International Covenant on Civil and Political Rights, which marked the transformation of attitude of international human rights law toward the death penalty: from tolerance to restrictions. The ICCPR defines the right to life and imposes restrictive provisions on the application of the death penalty in states around the world. After that, the third step is the adoption of the Second Optional Protocol of the ICCPR which makes more stringent and meticulous provisions on the death penalty to limit the application of that. Moreover, it also made an important complement to the ICCPR and added more obligations to States parties, the clear orientation of the Second Optional Protocol of the IC-CPR is the abolition of the death penalty worldwide.

In order to progressively realize the beliefs of ‘fundamental human rights, human dignity and value’ in the Charter of the United Nations in 1945, the United Nations committed to the development of human rights. For example, the Universal Declaration of Human Rights, which was adopted in 1948, proclaimed that ‘human are born free and equal in dignity and rights’ and that ‘everyone is entitled to life, liberty and security of person’, ‘no one shall be tortured, or cruel, inhuman or degrading treatment or punishment’. However, the Universal Declaration of Human Rights did not address the problem of the death penalty.

Although the Universal Declaration of Human Rights is not binding on the death penalty, the important role in the protection of human rights has been widely recognized by the international community. The World Human Rights Conference in Vienna in 1993 also made the evaluation of the Universal Declaration of Human Rights, which is the source and foundation of the United Nations to advance the process of international human rights law. At the same time, some provisions of the Declaration also had a profound impact for the abolition of the death penalty. Before the adoption of the Universal Declaration of Human Rights, the Commission on Human Rights, the Drafting Committee and the Third Committee of the United Nations General Assembly had a lengthy and intense discussion on the death penalty. This was also the first major consideration of the death penalty within the United Nations. Although the Declaration did not mention the death penalty, but it put the protection of the right to life into the Article 3 which is that everyone has life, freedom and property. This article is extremely simple and clear, but the process of drafting is long and tortuous. In the drafting of Article 3, the controversy over the issue of the abolition of the death penalty is various, the drafters of the Convention considered three options before the adoption of the Article 3: The first option is to use a clear way to recognize that the death penalty is an exception to the right to life. However, the opponents of the program argue that such a provision is equivalent to the recognition of the existence of the death penalty, which would hinder the achievement of the ultimate goal of the abolition of the death penalty. The second option is that the Declaration abolishes the death penalty unequivocally. Those who advocate this claim that the Declaration is a statement of the United Nations, it expresses a good desire of human. The Declaration is not binding the states which still allow the existence of the death penalty the domestic legislation. Therefore, it does not cause opposition from the United Nations member states, can increase the level of recognition of the abolition of the death penalty. While this view has been widely recognized, it is not adopted for the reason that some people think that such practices will isolate states that still retain the death penalty. It is worth mentioning that, there is no content to defend the existence of the death penalty in the preparations for the Declaration, it can be seen that the failure of this program does not mean that the United Nations approves or accepts the death penalty in some ways. The third option recognizes the rational and vital value of the right to life in an absolutely definite manner, it did not explicitly state whether to abolish or retain the death penalty. Although this way is vague, it still has advantages and ultimately get the majority of support. Therefore, it can be seen that

the right to life have been confirmed as the one of three basic rights in the Declaration. However, many scholars do not recognize this ambiguous attitude for the death penalty. They argue that even if Article 3 establishes the right to life, even the Article 5 specifically requires the prohibition of torture, but it does not include the content of the death penalty. Therefore, many people think that the declaration is obviously voiceless on the issue of the death penalty.

However, the author believes that although the Declaration does not include any direct relationship with the death penalty and it holds the seemingly laissez-faire attitude, it still need to combine the current international background to understand the real cause of this issue. As a product of the Second World War, the Declaration produced in the shadow of that. Although the war had ended and the criminals had been punished, the pain of the Second World War was still reminiscent at that time. People are afraid of the tragedy, and the issue is that if there is no death penalty, when the war and the criminals come again, how to protect citizens and punish the criminals. In this context, international human rights law was difficult to propose the abolition of the death penalty. And secondly, there were only seven countries which completely abolished the death penalty in the world when the Declaration was adopted. This basic situation shows that it is difficult to form an international unanimous goal of abolition of the death penalty. Because of the special background at that time, the attitude of the United Nations towards the death penalty presented in the Universal Declaration of Human Rights is neutral. However, it formally confirmed the right to life in the international provisions and arouses international community's attention to the right to life. In short, the death penalty is the focus of debate whether in the process of drafting or adoption of the Declaration. It also can be said that this process unreservedly demonstrated the death penalty debate of international community's, contributed to the initial formation of the concept of abolishment of the death penalty. Briefly, the Declaration plays a great role in promoting the development of inter-national human rights law and the modern abolition of the death penalty movement.

The Universal Declaration of Human Rights paves the route for the abolition of the death penalty while expressing acquiescence in the death penalty for some countries. In addition, following the Universal Declaration of Human Rights, the United Nations continues to work to regulate the scope of international human rights and hopes to reach a unified international human rights standard and to discuss the issue of the death penalty on a regular basis.

ICCPR limits the execution of the death penalty by Article 6(2), the last sentence of article 6 (2) is the first clear restriction of ICCPR's execution of the death penalty. It means that the death penalty can only be determined by the law, qualified and impartial court decisions, and only this decision can be executed by the judiciary. But whether such a judgment is actually carried out at the end, not only decided by a competent court, but also decided by whether it is special pardon or commutation. According to article 6 (4), every person sentenced to death has the right to seek amnesty or commutation, it demonstrates the respect of the right to life of the United Nations. In addition, ICCPR prohibits the execution of the death penalty for pregnant women in article 6(5) which states that 'The death penalty shall not be imposed on pregnant women'. If a woman is pregnant when she is sentenced to death or is waiting for the execute of the death penalty, the death penalty cannot be enforced in any situation, it is a restriction on the execution of the death penalty from the perspective of the subject of crime. International human rights law also limits the death penalty for minors. Article 6 (5) of the International Covenant on Civil and Political Rights provides that 'the death of a person under 18 years of age shall not be punishable by death'. Article 37 (a) of the Convention on the Rights of the Child provides that 'the offense against a person under the age of 18 shall not be punishable by death or life imprisonment without the possibility to release. Accordingly, any person who is under 18 years of age at the time of the offense shall not be sentenced to death or no possible life In addition, Article 7 of the ICCPR reaffirms that 'no person shall be tortured or subjected to cruel, inhuman or degrading treatment or punishment', but there is no clear stipulation about whether the death penalty is 'torture, cruel, inhuman or degrading treatment or punishment'. While the Convention does not expressly require all member states to abolish the death penalty, the conditions and scope of application of the death penalty are clarified in ICCR. In article 6 (6), the ICCPR requires the member states to not delay the process of the abolition of the death penalty on the grounds of the provisions of the ICCPR, which shows the ultimate goal of the United Nations to completely abolish the death penalty .

In the 30 years since the Universal Declaration of Human Rights in 1948 to the International Covenant on Civil and Political Rights in 1976, the international trend of restraining and abolishing the death penalty had taken place. In fact, the United Nations and some member states promote the process of abolishing of the death penalty together, abolish or suspend the execution of the death penalty also showed an increasing trend. Many international organizations and scholars believe that the abolition of the death penalty has evolved into international customary legal norms, based on the increasing number of international legislations that restrict and abolish the death penalty.

Although there are nearly one-third of the world's states to retain the death penalty, it does not mean that some of the practices in the application of the death penalty violate international customary law. Such as the fact that almost all international conventions prohibit the application of the death penalty for persons under 18 years, the application of the death penalty to minors is clearly prohibited by customary law because the death penalty for minors has not been accepted and putted into practice, it has been evolved into international customary law. In addition, prohibition of slavery, torture, genocide and aggression are nationally applicable laws. The prohibition of the death penalty for pregnant women and the prohibition of the application of the death penalty to mentally ill persons and persons with intellectual disabilities should also fall within the scope of international customary law. Therefore, some of the international restrictive provisions applicable to the death penalty have indeed evolved into international customary law or enforceable rules.

The adoption of the Protocol demonstrates the strong demand for a comprehensive abolition of the death penalty by the United Nations. And the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights shows that the abolishment of the international death penalty has come to a substantive step. There are nine important articles in the whole protocol. Among them, article 1 established the main purpose of the Protocol, but also the most substantive content. This automatically go into effect legislation means that the abolition of the death penalty is automatically entered into force in the territory of the State Parties, no person shall be punished the death penalty within the jurisdiction of the States Parties to this Protocol. Article 2 imposes an obligation to the State party on the basis of Article 1, the Protocol does not completely abolish the death penalty, which allows the death penalty to be retained during the war, and that is, those who commit the most serious crimes in wartime can be sentenced to death. At the same time, paragraph 2 of Article 2 establishes an important principle that states that have abolished the death penalty should not resume the application of the death penalty. In addition, Article 6 positioning of the Protocol as an additional requirement for ICCPR, it can be seen that the Protocol is a legal document to protect human rights in the form of an international convention by the United Nations, which promotes the further development of the international human rights law movement. It can be said that the protocol is a manifestation of the abolition of the death penalty by the United Nations in international human rights law. Furthermore, the adoption of the Second Optional Protocol to the International Covenant on Civil and Political Rights shows that the abolition of the death penalty is an irresistible world trend, which establishes the worldwide standard of legal development of the death penalty.

In response to the unrealistic nature of the abolition of the death penalty around the world, the United Nations has adopted a relatively moderately pragmatic strategy to promote the process of abolishing the international death penalty, in which, the imposition of the death penalty in the states of the world is an important measure. Such as the United Nations Eighth Congress of Crime Prevention and Criminal Justice Resolution to consider the possibility of suspending the application of the death penalty within the framework of domestic law. However, this resolution was rejected because it did not meet the requirements of the United Nations rules of procedure to obtain a majority vote. In December 1994, the United Nations General Assembly adopted a resolution calling for states which did not abolish the death penalty to consider the abolition of death penalty and encourage them to suspend the execution of the death penalty. However, the resolution failed to meet the statutory number of votes as well. In October 1999, the 54th session of the United Nations General Assembly submitted a draft resolution urging those who reserve the death penalty to further limit the death penalty and establish a moratorium on the execution of the death penalty in order to prepare for the complete abolition of the death penalty. As a United Nations subsidiary body, the United Nations Commission on Human Rights has also actively promoted this resolution which was adopted in 1997 and called on all states who still retain the death penalty to suspend the execution of the death penalty from the aim of complete abolition of the death penalty. After these, at the turn of the new millennium, the Commission on Human Rights called upon those States which had retained the death penalty to suspend the execution of the death penalty in 2000 and to commute those who had been sentenced to death on 31 December 1999 to commemorate the arrival of the new millennium, and this action also can be seen as protection of human rights.

While the Convention on the Prohibition of Torture and Other Inhuman and Degrading Treatment or Punishment does not provide content for the death penalty, the Committee against Torture expressed concern about the death penalty in concluding observation reports. The Committee expresses its support for the complete abolition of the death penalty, for example, during the annual statements in South Korea, the Committee stated that the death penalty was a cruel and inhuman punishment, requested South Korea to abolish the death penalty. In addition, many States parties of the Convention against Torture are working for the abolition of the death penalty. Furthermore, the Rome Statute of the International Criminal Court completely ruled out the death penalty as an international criminal code, only retained set term of imprisonment and life imprisonment. This is not only a

concrete manifestation of the United Nations' commitment to promoting the abolition of the death penalty, but also has a far-reaching impact on criminal legislation and justice around the world.

#### **4. Abolishment of the Death Penalty in International Human Rights Law**

The International Covenant on Civil and Political Rights just allows the death penalty punished to the most serious criminals in states which retain the death penalty. So, what are the most serious crimes? It can be found in the safeguards, guaranteeing protection rights of those facing the death penalty approved by Economic and Social Council resolution 1984/50 of 25 May 1984. The provisions on the death penalty in the safeguards, guaranteeing protection rights of those facing the death penalty (referred to as safe-guards below) are the further reaffirmation and development of the death penalty on the basis of the ICCPR. From the content point of view, safeguards measure on the death penalty is more obvious and full. It stipulates that only the most serious crimes can be punished by death in states where the death penalty has not been abolished, but the scope of the death penalty is limited to deliberate action. In fact, the understanding of the most serious crimes is different in different states because of differences in social, cultural, religious and political of each state. In this regard, the understanding of most serious crimes can be divided into the following points: Firstly, property crime, economic crime and political crime should be excluded from the most serious crimes, since these crimes are nonviolent. This standard is also embodied in American Convention on Human Rights, Article 4 (4) provides that that death penalty cannot be imposed on a political offender or an ordinary offender. Secondly, the narrower interpretation is that the most serious act of violence during the war, which is reflected in Article 2 (1) of the Second Optional Protocol to the ICCPR. Thirdly, the death penalty cannot be punished on people with mental retardation. Therefore, the tolerance of crime is different for each state, and the understanding of the most serious crimes should be based on the attitude of states on crime. It is hard to make a mandatory stipulation for the death penalty.

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights against torture, cruel, inhuman or degrading treatment or punishment. But the views of states on inhuman of the death penalty are quite different. Is the death penalty inhuman? The views of states are very different. In the case of human rights, some states argue that the death penalty is extremely unrespectable for the right to life, it is also extremely physical and psychological violence to criminals. Therefore, the death penalty is the most brutal, inhuman and humiliating punishment. On the other hand, from the applicable situation, the death penalty is often punished to a vulnerable group who can not get legal help. If a person belongs to race, religion, ethnicity, ethnicity and gender groups, this often constitutes an important factor in the decision leading to an execution. In practice, judgments are often discriminatory, and this discrimination is often directed against the poor and members of ethnic, ethnic, religious and gender groups.

Article 14(5) of the ICCPR provides for the right to appeal, that is, where a convicted person is entitled to a review by a higher tribunal. And any person sentenced to death has the right to appeal to a higher level court, and appropriate measures can be taken to ensure that the appeals are mandatory. The above provisions require the establishment of a mandatory appeals system for the death penalty cases, that is, the procedure of appeals in the case of death penalty is compulsory or automatic, which is different from the general case. In this case, the defendant should not only enjoy the right to appeal in the death penalty case, and this right of appeal is not to be abandoned, it is mandatory. In conclusion, the purpose of the Article 14 of the ICCPR is to ensure the proper functioning of the judicial system and to guarantee the specific rights of the person to be tried.

Prisoners under sentence of death have the right to be pardoned and the right to be reduced a penalty. Article 6 (4) of the ICCPR provides that any person sentenced to death is entitled to a pardon or commutation. All cases of death shall be granted amnesty or commutation. Article 7 of the safeguards, guaranteeing protection rights of those facing the death penalty also provides that any person sentenced to death shall have the right to seek amnesty or commutation, and all cases of death shall be granted amnesty or commutation. These provisions grant the right to a person who is sentenced to death for the purpose of forgiving or mitigating. Although these provisions do not require states to pardon or reduce the penalty of people who are facing the death penalty, it has positive significance for reducing the actual implementation of the death penalty.

The rights for prisoners should be protected by states, because the judgment of cases always occur inside states. Similarly, the worldwide abolition of the death penalty also influences the national sovereignty. Power of punishment is one of the important representations of sovereign states, which have right to decide applying which punishment according to the needs of judicial justice, economic development level, historical and cultural background and other factors, but also have right to decide whether to abolish a certain punishment. In addition,

the issue of the death penalty is a matter of legislation and justice and an affair within the scope of sovereignty in a state, no other states can interfere that. Moreover, the death penalty is not just a human rights issue, but also a category of sovereignty. In fact, the abolition of the death penalty is determined by many factors, not just for human rights. Some states who are still existing the death penalty have their social reasons, for example, some Chinese scholars think that China is a developing country, there are many social problems such as the class contradictions, the gap between rich and poor, low level of education, national quality is generally not high. There is another reason that China is currently in a period of social transformation with a high degree of complexity. Solve the death penalty as the most deterrent means of punishment can maintain social stability.

The death penalty can only be carried out in accordance with the Court's final decision only if the legal process guarantees the judicial justice. Article 14 of the International Covenant on Civil and Political Rights provides that any person suspected or accused of a death sentence is entitled to the legal aid in every stage of proceeding. Accordingly, the application of the death penalty to the offender must be accompanied by due process of law, and the death penalty must be enforced in accordance with the final judgment.

Compliance with standards of due process in the course of trial refers to the recognition of minimum legal safeguards standards in the International Covenant on Civil and Political Rights and other international legal instruments, in accordance with Economic and Social Council resolution 1984/50. Article 14 of ICCPR provides that the court should treat everyone equally. Each person has the right to have a fair trial in a legally established court, and the judgment of the trial should be public except for cases about child custody or juvenile interests. First of all, to a certain extent, this provision to ensure the fairness of the case hearing process, and the open trial blocked all kinds of channels of favoritism and corruption. Allowing the judge to carry out the trial and the referee in full view can cut off the irregular connection between the judge and the client. Secondly, the open trial is an important way to establish the authority of the judiciary. Through the public trials, people can clarify the facts in court, it greatly protects the impartiality of the referee and establish a judge's integrity image. Thirdly, public trial is a necessary measure to satisfy the citizens' right to know. In the modern democratic and rule of state, the public trial is also the requirement of the people's right to know about the trial. Since the public has the right to supervise the judicature, they could enjoy the right to understand the proceedings, which is the right to know. People through understanding the process of trial to understand law and legal procedural and to believe that the trial is fair, and the judiciary has the obligation to meet the citizens' right to know. Fourth, the implementation of the open trial can close the relationship between the court and the masses, enhance the sense of responsibility of the trial to prevent the phenomenon of illegal and chaos. Fifth, it not only can give full play to the educational role of the trial, to expand the effectiveness of cases, but also can promote criminals confessed to the law, educating the masses actively fight and prevent crime.

## 5. Conclusion

The United Nations has successfully upgraded the relevant provisions of the abolition of the death penalty to the norms of international human rights law, it established the based reform and provided the corresponding guarantee mechanism of abolishing the death penalty in international law. The United Nations not only brings obligations to States parties through international treaties, but also urges the reform of domestic law in the context of the death penalty. In the case of United Nations Member States, the death penalty reform is highly necessary, because the abolition of the death penalty can fully reflect the spirit of humanism and actively respond to international legal trend. In fact, the consideration and discussion of the reason for existence of the death penalty is to consider whether the actual effect of the death penalty is appropriate in the international community, because the demand of states is different in different states. The death penalty cannot be used as a means of punishing the perpetrator or deterring the potential offender if the effect of deterrence against crime can be achieved only by life imprisonment or set term of imprisonment. Moreover, the value of human life is paramount compared to economic interests and political interests, and it is only necessary to use the death penalty to confirm or protect a higher interest in terms of value measurement. Therefore, the use of the death penalty should be very cautious and scientific, which requires Member States to seriously examine the existing domestic law to decide whether abolishing the death penalty. At present, the international community is still volatile, international law and domestic law need to be improved, and the greatest threat of social unrest is the violation of the right to life, based on this phenomenon, only the early completion of the abolition of the death penalty can effectively promote the legal progress and human rights development.

While most scholars and countries support the abolition of the death penalty, the process of abolition of the death penalty is very slow in the United Nations. From the Declaration on the Right to Life in the 1948 Universal

Declaration of Human Rights to the International Covenant on Civil and Political Rights in 1966, it took 18 years and spent 23 years from ICCPR to the Second Optional Protocol of the ICCPR in 1989. Moreover, since the adoption of the resolution on the moratorium on the death penalty by the United Nations General Assembly in 2007, four reports on the global abolition of the death penalty and the moratorium have been submitted to the United Nations General Assembly.

In the process of abolishing the death penalty, the United Nations has devoted a great deal of effort to the drafting and adoption of human rights documents, which has been extensively discussed among different supporters of the death penalty theory. The first point is to limit the death penalty. Although this view is insufficient, proponents believe that the death penalty cannot be completely abolished in combination with the current international situation. In the face of the fact that there are still some countries that retain and use the death penalty, the scope of the use of the death penalty should be strictly limited. Many developing countries still retain and use the death penalty, such as China, India and Thailand. Some scholars especially from developing countries believe that the death penalty is one of the most serious retributive penalties for criminals, there are ethical rationality and legal impartiality for the existing of the death penalty. And the death penalty cannot be completely abolished, regardless of the function of the penalty or the emotional needs of mankind. For some countries, the question should be considered is how to control the death penalty in the smallest range, rather than immediately abolish the death penalty, because the death penalty does not have sufficient material conditions in these states, and some scholars argue that the use of the death penalty can protect the interests of the people and punish the crime of extremely serious criminals. The second view is to gradually reduce and abolish the death penalty in the states where the death penalty is retained. Those who hold this view generally believe that the death penalty is not legitimate and humane, the death penalty should be abolished. However, based on the basic national conditions of some states, the death penalty cannot be immediately abolished, we should gradually reduce the provisions of the death penalty in the legislation, to reduce the use of the death penalty in the justice, and to wait a suitable time to complete the abolition of the death penalty.

The death penalty is not the only measure to keep social security and stability, it is a criminal punishment after the complete of serious crimes. In fact, the purposes of peace keeping and punishing crimes can be achieved through other penalties, such as life imprisonment. The completely abolition of the death penalty will be a long process in the United Nations, because the legal situation of each state is different and the death penalty cannot be abolished immediately in some states. The experience of the abolition of the death penalty in the world shows that the restriction and abolition of the death penalty requires scientific judicial framework and reasonable law, the state should consider several of factors before abolishing the death penalty. As the initial human rights treaty, the Universal Declaration of Human Rights started to protect the right to life in 1948, after that, the idea of abolitionism was raised in international human rights law. And then, the acceptance of complete abolition of the death penalty by the ICCPR and the Second Optional Protocol of the ICCPR from the early 1960s greatly promoted the evolution of the death penalty. At present, the point of abolishing the death penalty has been widely accepted by international community and some states seen that as a goal to achieve in legal system. Although the process of the abolishing death penalty is still very long in the United Nations, the completely abolishment of the death penalty will be achieved in the future.

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