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Via post and fax: +44 (0)20 7691 6544

Justice Richard Goldstone / Mr Martin Šolc
IBAHRI Co-Chairs
International Bar Association
10th Floor
1 Stephen Street
London W1T 1AT
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Dear Sirs,

LETTER FROM INTERNATIONAL BAR ASSOCIATION'S HUMAN RIGHTS INSTITUTE (IBAHRI)

We refer to your letter dated 23 April 2009 expressing the IBAHRI's concern about the continuing enforcement of the death penalty for certain crimes in Singapore.

2. We would like to make the following observations.

3. Firstly, the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) do not outlaw the death penalty. In the drafting of Article 3 of the UDHR, some countries pushed for the total abolition of the death penalty - they were defeated. At the time of the UDHR's adoption in December 1948, some 15 European countries, including the UK, not only had capital punishment on their statute books, but were also imposing and implementing the death penalty. When these countries adopted the UDHR, they did so with the clear understanding that the death penalty was being imposed by various countries and that it was not a human rights issue.

4. Secondly, the reality is that a significant number of countries did not vote in favour of the UN General Assembly resolution that you cite. In 2008, forty-six (46) countries voted against the resolution, including some of the world's largest democracies and the most populous countries in the world; thirty-four (34) countries abstained from the vote. There is no international consensus on the use or abolition of the death penalty. Moreover, the death penalty still appears to command the support of a majority of the population even in countries that have abolished it by law. For instance, a poll conducted by The Observer in 2003 revealed that nearly half of all Britons have been a victim of crime. 67% of those polled supported the imposition of the death penalty. Another survey conducted for The Economist in 2008 showed that 74% of Britons and 76% of Americans polled supported capital punishment for murder. The IBAHRI's current views do not represent those of the majority of humanity. Indeed the Council's Resolution on the Abolition of the Death Penalty itself notes that international consensus on the abolition of the death penalty has not yet been reached.

5. Thirdly, there is no consensus against capital punishment, including mandatory capital punishment, imposed according to the due process of the law. The types of offences which should attract the death penalty, and whether its imposition should be mandatory or otherwise, is a criminal justice issue and one for the legislature of Singapore which, "in the case of drugs offences, it has answered by s 29 and the Second Schedule of the Drugs Act." (*per* Lord Diplock in *Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64). In that case, the Judicial Committee of the Privy Council had unequivocally ruled that there was "nothing unconstitutional in the provision for a mandatory death penalty for trafficking in significant quantities of heroin and morphine" and that there was "no substance in the suggestion that s 15 of the [Misuse of Drugs Act 1973] was inconsistent with the Constitution". Declaring that "there is nothing unusual in a capital sentence being mandatory", Lord Diplock then went on to affirm that "indeed its efficacy as a deterrent may be to some extent diminished if it is not.". The learned Law Lord noted that "at common law all capital sentences were mandatory".

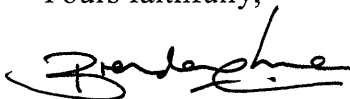
6. Fourthly, customary international law does not arise just because of a handful of instances where certain former and current Special Rapporteurs make pronouncements *ex cathedra*. "Custom" refers to a "general practice accepted as law" (Article 38, paragraph 1(b) of the Statute of the International Court of Justice), that is, there has to be a usage that is to be found in the practice of states or a general practice of the international community, accompanied by a conviction or *opinio juris* that the community does so as a matter of legal obligation. The reality is that there is a divergence of state practice and opinion of the international community regarding capital punishment. We do not accept that just because certain countries have changed their attitudes over time, this *ipso facto* represents the consensus of the rest of humanity.

7. Fifthly, the 2008 World Drug Report by the United Nations Office on Drugs and Crime reveals that the annual prevalence of abuse of cocaine as a percentage of the population aged 15-59 is 2.6% for the UK and 0.0002% for the population aged 15-64 for Singapore. The figures for the abuse of cannabis are 8.2% for the UK and 0.005% for Singapore. The same trend repeats itself for the other drugs, such as amphetamine-type stimulants (1.3% for the UK compared to 0.005% for Singapore) and ecstasy (1.8% and 0.003% for the UK and Singapore respectively). These figures (in our view) demonstrate the strong deterrent nature of the death penalty for drugs. In Lord Diplock's words in *Ong Ah Chuan v Public Prosecutor* [1981] 1 MLJ 64, "A primary object of imposing a death sentence for offences that society regards with particular abhorrence is that it should act as a deterrent; particularly where the offence is one that is committed for profit by an offender who is prepared to take a calculated risk. There is nothing unusual in a capital sentence being mandatory. Indeed its efficacy as a deterrent may be to some extent diminished if it is not."

8. Sixthly, all trials and appeals are conducted in public in Singapore. All judicial decisions involving the death penalty are open to public scrutiny. The more newsworthy trials are routinely reported in the local and even international media. Singapore has one of the most fair and transparent legal systems in the world. Our legal and judicial system has been consistently rated highly in international and regional rankings for its integrity and transparency.

9. Every state has the right to choose its own political, economic, social and legal system based on what it considers to be its own best interests. For Singapore, capital punishment is a strong deterrent that is imposed only for the most serious crimes. We believe that it is a fundamental human right of all our citizens to live in a safe and secure environment, free from drugs, guns, random street violence and terrorism. As far as law and order are concerned, the values that we hold were not alien to many civilized nations. Respect for human rights, one of the stated goals of the IBAHRI, must include respect for differences in values.

Yours faithfully,



Brenda Chua
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for Permanent Secretary
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