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REGIONAL CONSENSUS IN SUPPORT OF A
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A MORATORIUM ON THE USE OF THE
DEATH PENALTY

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Outreach, Overstretch or Underhand? Strategies for cross-regional consensus in support of a UN General Assembly Resolution on a Moratorium on the use of the death penalty*

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On the 18 December 2007, the United Nations General Assembly (UNGA) in New York adopted a resolution calling on all states still using capital punishment to establish ‘a moratorium on executions with a view to abolishing the death penalty’.ⁱ The resolution was hailed as a ‘landmark’ by both the United Nations and Amnesty International,ⁱⁱ not least because it recalibrated the balance in the UNGA between ‘abolitionist’ and ‘retentionist’ states firmly in favour of the former. The dividing lines are drawn not only according to a state’s preference or not for executing criminals, but also on whether the death penalty is ‘perceived as a prerogative of domestic jurisdiction’ⁱⁱⁱ or as being an affront to fundamental human rights. Retentionists argue that using the death penalty is an issue for national governments to decide according to their domestic criminal legal system, and thus beyond the purview of the UN according to Article 2(7) of the UN Charter.^{iv} Abolitionists seek to locate the death penalty within the established body of international human rights law, to which end the new resolution cites the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child. The resolution was a landmark in the journey towards making state sovereignty conditional on respect for minimal international norms, as envisaged

by Kofi Annan in 1999 when he said that the ‘state is now widely understood to be the servant of its people, and not vice versa. At the same time, individual sovereignty – and by this I mean the human rights and fundamental freedoms of each and every individual as enshrined in our Charter – has been enhanced’.^v

Is the death penalty resolution merely a battle in the decades long war between Northern industrial states and the global South of developing states? Alongside the ideological division between East and West, the North-South divide in the UN has been an enduring political schism of the organisation. At times it has been the impetus for change, such as the enlargement of the Security Council, the mid-70s structural reform,^{vi} and the proposals put forward in Annan’s *In Larger Freedom* in time for the 60th Session in 2005, which according to Prins contained the blueprint for a grand bargain between ‘northern and southern’ states.^{vii} However, far more frequently it has damaged the UN, evidenced through the limited success of these reform efforts, as well as the numerous occasions it has impeded ‘action on many substantive issues’.^{viii} The rise of the South to a position of numerical majority in the General Assembly coincided with decolonisation, and the formation of two blocs seeking redress for historical wrongs. The Non-Aligned Movement (NAM) spoke on behalf of the South in geopolitical issues, while the Group of 77 (G77) represented their interests in social and economic matters. The ‘global South, despite lacking substantive cohesion, has been successful projecting a unified front against the North’,^{ix} most prominently promoting the (ultimately unsuccessful) New International Economic Order (NEIO) during the 1970s. Malone and Hagman argue that the North-South divide has become less significant in the wake of the terrorist attacks of 9-11, when a pragmatic approach to consensus decision-making developed, partly on the basis of solidarity with the US.

Seven years on this positive appraisal looks over optimistic, as the US-led invasion of Iraq challenged the legitimacy of the Security Council, the Doha development round of trade liberalisation conceived originally as part of the wider response to 9-11 remains incomplete, and international efforts to respond to the threat of global warning remain fundamentally divided over the responsibility of the industrialised North and industrialising South to bear the costs. Where does this resolution fit in the bigger picture of present-day UN politics?

Where too does the European Union (EU) fit into this? The EU played an instrumental role in the drafting this resolution in the UN GA Third Committee (Social, Humanitarian and Cultural Rights), and subsequently campaigning for its adoption by the General Assembly. The 27 EU member states co-authored the resolution with nine non-EU states (Albania, Angola, Brazil, Croatia, Gabon, Mexico, New Zealand, Philippines, Timor-Leste) and were supported by 51 other abolitionist states, bringing the total number of co-sponsors to 87. In the final vote of the Third Committee, the resolution was passed unchanged (despite a number of proposed amendments to ‘wreck’ the resolution, described in more detail below) by 99 votes in favour to 52 against (with 33 abstentions).^x One month later when presented to the General Assembly, it was passed by 104 votes to 54 against (29 abstentions). From this we can see that over half of the UN membership supported the resolution, far more than the 27 votes that EU member states can muster alone. This raises the question of whether the EU is finally becoming the effective multilateral actor it aspires to be in the 2003 European Security Strategy, and whether it can use the UN to win the argument for ‘well functioning international institutions and a rule-based international order ... establishing the rule of law and protecting human rights’.^{xi}

Given that the EU failed to pass a similar resolution in 1999, what lessons has it learnt since then? Finally, what can this case study tell us about the way the EU is reaching out to the wider UN membership in order to achieve consensus?

This paper sets out to answer these questions through a detailed investigation of the circumstances leading up to the successful resolution. It draws on UN documents and interviews with a number of diplomats based in New York, both EU and non-EU members.^{xii} The paper proceeds in six sections. The first gives a brief history of efforts to outlaw capital punishment through the UN. The following four sections look at (2) the role of the Italian government, (3) the role of the EU Portuguese Presidency, (4) the role of the nine co-authoring states and (5) the role of Amnesty International (AI). The conclusion argues that the resolution passed thanks to a fortuitous constellation in which all four aspects were mutually dependent, and sums up the findings of the article in six further points.

1. The background story: Past efforts to outlaw the use of the death penalty

The use of the death penalty is an emotive issue in the United Nations, driving a sharp cleavage between abolitionist and retentionist states.^{xiii} For many years Amnesty International has kept a record of where states stand on the question, during which time there has been a gradual shift towards favouring abolition. While there are broad regional trends, there are no hard-and-fast laws predicting state preferences. The Council of Europe outlawed the use of capital punishment under Protocol No.6 of the European Convention on Human Rights since 1983 (the ECHR itself dates from 1950), and many Western European states have been long-standing abolitionists. The

end of the Cold War and the subsequent eastward enlargement of the Council of Europe into Central and Eastern Europe and the former Soviet Republics resulted in a wider abolitionist movement, including Russia.^{xiv} Elsewhere in the Western Europe and Other Group (WEOG) Australia, Canada and New Zealand have adopted abolitionist positions, while the US remains staunchly retentionist. The majority of Central and South American states are abolitionist, although Caribbean states (grouped as CARICOM) wish to retain the death penalty. The majority of Asian states and Arab states also favour retention, while the African group of states is increasingly divided as more members give up the death penalty, including Rwanda in 2007. In votes concerning the abolition of the death penalty, changing attitudes in Africa effectively hold the balance of power in the General Assembly.^{xv}

The UN forum in which the death penalty should be negotiated is also contested. Retentionist states (often led by Singapore and Egypt) defend their right to impose the sentence through locating the debate within the context of domestic judicial systems. They want to limit discussion of the issue to the UNGA Sixth Committee on Legal Affairs, in which it is clearly regarded as a domestic issue and the UN system should respect the sovereignty of its members. Strategies to 'wreck' the 2007 resolution (and preceding years' drafts) attempt to insert paragraphs referring to Article 2(7) of the UN Charter, signalling a privileging of state sovereignty over human rights.^{xvi} According to diplomats involved in the drafting of the 2007 resolution, the crucial moment when supporters learnt whether their proposal would succeed came when a vote was called in the Third Committee to adopt an amendment introducing a reference to Article 2(7).^{xvii}

By contrast, abolitionist states have two, related, objectives in the UNGA. The first is to raise the death penalty in the Third Committee, thereby establishing it as a human rights issue granting the United Nations a more active role in norm-setting and monitoring. The second objective is to avoid any references to the prerogative of national sovereignty over and above human rights issues. Abolitionists fear that such references harm their campaign by setting detrimental precedents and eroding the work previously done to encourage states to refrain from using the death penalty. The issue also illustrates the fragility of EU cohesion, with a number of national positions including the ‘red line’ that any inclusion of a reference to Article 2(7) is insupportable and thus a ticking time bomb under the EU common position.^{xviii} As we shall see below, the issue led to the disintegration of a common European position in the UNGA Third Committee in 1999.

Bantekas and Hodgkinson present a clear and concise overview of progress towards the abolition of the death penalty in the UN system during the 1990s. Two previous attempts to pass a resolution through the UNGA Third Committee failed, the first in 1994 led by Italy attracted 49 co-sponsors but was voted down by retentionist states.^{xix} A second attempt in 1999 led by the Finnish EU Presidency received 75 co-sponsors from WEOG, Eastern European states, Group of Latin American Countries (GRULAC) and a few African states. Singapore and Egypt led the retentionist states’ response by preparing two ‘wrecking’ amendments that introduced language into the document intended to subordinate human rights to sovereign autonomy, thus countering what they felt was the North dictating new terms of sovereignty to the South. By the time the Third Committee met to discuss the proposed amendments, 80 co-sponsors had been collected in favour of the wrecking amendment and it was clear

to all that its inevitable adoption would result in the EU authored resolution setting the abolitionist cause *back*, rather than furthering it.^{xx} In the face of defeat EU cohesion disintegrated, with open disagreements between EU member states themselves, and between the EU and the other co-sponsors. One NGO observer regarded this as the EU's worse foreign policy fiasco in the UN, while Bantekas and Hodgkinson identified the internal squabbling of the EU member states as particularly damaging. 'It was the very public nature of their disagreement and disarray that gave succour to their detractors and encouraged waverers to indicate support for the Egyptian amendment'.^{xxi}

Failure in New York was not the whole story, however, as EU member states had successfully authored resolutions on the death penalty in the more favourable environment of the Geneva-based UN Commission on Human Rights (CHR). Italian diplomats drafted resolutions on the death penalty in 1997 and 1998, and the EU presidency took over the task in 1999 and repeatedly passed resolutions up until 2005.^{xxii} In 2006 the CHR was replaced with Human Rights Council (HRC), part of the *In Larger Freedom* reform programme that responded to the concerns of the South by re-weighting the regional balance in the HRC in favour of Asian and African states. In the years after these changes, the EU has shifted from being proactive to reactive, and tabled no resolutions on the death penalty there since.^{xxiii} This leads to an interesting paradox in the UN human rights architecture. Success in framing the death penalty as a human rights issue in the CHR originally prompted the EU to attempt the same task in the UNGA, although ending in failure. This reinforced the perception that the UNGA was the more conservative body because of the high number of Southern states defending their retentionist position through

majoritarianism, while the skewed representation of WEOG and GRULAC in the CHR explained its progressiveness. This case study illustrates the opposite tendency, where the HCR is the conservative forum while the UNGA is more progressive.

The final issue to briefly touch upon is the middle way between retention and abolition – a moratorium – which was seen by the co-authors as a sensible path because it allows states to commit to ending capital punishment while avoiding the need for legislative reform domestically. Such a position provides a considerable amount of leeway across the spectrum of positions within the UN, although this seemingly commonsensical position remained unacceptable to the EU for a long while. The argument against this approach is that it pitches the debate too low explicitly because it does not commit governments to removing the death penalty from their legal codes. States can be persuaded to accept a moratorium through bilateral and multilateral diplomacy, and the UN forum is needed to push states to take the more radical step of removal. Abolitionists still reel from the 1999 debacle and have chosen instead a strategy of biding their time until the argument can be won (Amnesty International advocated waiting until 100 co-sponsors could be gathered before pursuing a resolution). Too much willingness to make concessions to the retentionists in the name of consensus risks drafting and accepting a resolution constituting the new *status-quo* position that would be difficult to move away from. Within the EU, Sweden, Denmark and the Netherlands are closest to this position. On the other side stand the pragmatists who see any resolution as a step in the right direction, a position long held by Italy and evidenced by Roberto Toscano's argument that success in the CHR in 1997 and 1998 was founded on the 'failure' in the UNGA in 1994 because it put the issue on the human rights agenda.^{xxiv} From this brief history

a number of questions arise. The first is how did the EU manage to succeed in 2007 when it failed in 1999? Our analysis will look at intra-EU and external factors, in order to see whether the EU has learnt any lessons about building consensus in the UN, whether the rest of the UN has moved on during the last eight years (or possibly that the UN has learnt to love the EU). The conclusion will also touch upon the question of whether the UNGA is a more conducive environment for human rights promotion than the HCR, and whether the EU could repeat its achievement with the death penalty in other areas that are currently beyond the scope of the HCR agenda.

2. The Role of Italy: Underhand

‘Italy wanted a resolution on the death penalty at all cost.’ This statement is widely accepted by EU and non-EU diplomats alike, and many give credit to the Italians for putting in a considerable amount of effort to drive the resolution forward, to the point where some observers noted that it appeared at times as if the whole Permanent Mission in New York was working toward that goal. This is in no way controversial, since Italy has a long history of support for action against the death penalty in the UN, leading efforts in 1994 to reframe it as a human rights issue. The lead taken by Italy in the CHR laid the foundations for EU action there too, and from this we can regard Italian diplomats as norm entrepreneurs in the EU and in the UN through their campaigning.^{xxv} However, taking a more critical view one might regard their willingness to see a death penalty resolution passed as over-riding their concern for the content, evidenced by Italian willingness to accept the Egyptian ‘wrecking’ amendment to the 1999 Third Committee resolution for the sake of consensus.^{xxvi}

Italian domestic politics played a significant role in driving the resolution forward. Despite having one of the broadest political spectrums in the EU and its traditionally short-lived ruling coalitions, opposition to the death penalty crosscuts through Italian politics. One of the principle ways in which it found its way onto the mainstream agenda was through Emma Bonino, member of the Italian 'Rose in the Fist' party and part of Romano Prodi's left coalition. Bonino was appointed minister for international trade in 2006, but made an international resolution against the death penalty part of her party's election manifesto.^{xxvii} The explicit commitment from one of the governing partners towards this end helps to explain why such considerable resources were put behind the effort in New York in 2007. Public awareness of the issue was increased through the Italian NGO 'Hands off Cain', dedicated to the abolition of the death penalty worldwide, which worked with Bonino for this goal.^{xxviii} One only needs to look at their press release after the 2007 resolution in the Third Committee: 'Death Penalty: Historical triumph for the defence of human rights worldwide against state vengeance. *A victory for Italy and for a broad community of countries from all continents*' (emphasis added).^{xxix} Diplomats in New York also noted how the Italian Foreign Minister, ostensibly at the United Nations for a Security Council meeting on the 19 December, was 'on hand' to speak to the General Assembly should it be necessary to add more weight to the argument in favour of the death penalty resolution which took place the day before.^{xxx}

Italian support for a resolution against the death penalty came from within the European Commission too. The then EU Commissioner responsible for Justice, Freedom and Security, Franco Frattini of the right-wing Forza Italia party, attended a

conference titled 'Europe against the death penalty' in Lisbon in October 2007, where in his address he stated:

We must take advantage of the trend worldwide towards the abolition of the death penalty to call on all "de facto" abolitionist African States to full-fledged legislation ruling out death penalty. We should also call on those African States which still apply the death penalty to join a universal moratorium as a strategic move towards the abolition of the death penalty in all countries.^{xxx1}

Of interest here is the reference to Africa, already identified as the 'swing' region that held the key to the successful passing of the resolution. The Italian MEP Marco Pannella of the Italian Radical Party also publicised the campaign against the death penalty through undertaking protests including a hunger strike.^{xxxii} The constellation of Italian political actors in the government, foreign ministry, the European Commission and European Parliament are all given as examples by diplomats in New York of the huge political significance placed on a resolution in the UNGA by the Italians. The problem for other EU member states was while they shared abolitionist goals, some regarded content as more important than consensus for the sake of the campaign.

What impact did Italian enthusiasm for a death penalty resolution have on the normal operating procedures of the circle of EU diplomats in New York? Two points are worthwhile mentioning. To begin with, the Italian national position lay far away from those of Netherlands, Sweden, and Denmark, the states most reluctant to move away from strict abolitionist language. The EU Presidency carefully negotiated EU positions between the 27 member states, hindered by the fact that instructions from national capitals were sometimes contradictory and requiring on a number of occasions referrals up to COHOM in Brussels when issues reached a deadlock in New

York, including the issue of whether a moratorium was acceptable to all member states. In parallel to these finely balanced negotiations between counsellors, a number of diplomats recalled occasions when the heads of missions (HoM) would meet and Italian officials would raise the issue of the death penalty resolution without aides being present. The HoM risked acquiescing to broadly acceptable positions (such as ‘we need to pass this resolution’) that undermined the intricacies of their national positions. During the autumn of 2007, HoM were regularly briefed on progress towards the draft resolution text in case they met Italian officials out and about in New York. Secondly, the Italian mission played a very strong role in promoting the issue in the wider UN, not least thanks to its long-standing commitment to the cause and the contacts gained during that time. At the same time the formal ‘face’ of the EU was the Presidency, and it was their task to synthesise an EU position internally and negotiate externally. The salience of the issue to Italy meant that it was the most prominent member state alongside the Presidency, to the point where at times some observers from outside the EU thought it eclipsed the Presidency. Insiders acknowledged that by the end of December 2007 tensions were running high between the Portuguese Presidency and Italy, and they thought that the former were not to blame. Between the two, the French played an important role, likened by some to that of ‘peacekeepers’.^{xxxiii}

Is it fair to label Italy as underhanded? Their actions amount to pushing the limits of formal procedures for coordination, being highly prominent throughout and at times stepped on the toes of the Presidency, and using the EU to multiple its influence in the UN to promote an issue of national foreign policy. Yet this is widely acknowledged by intergovernmental theorists to be the prerogative of any large EU member state,

and in the UN especially true for France and the UK with their roles as permanent members of the Security Council. What is surprising is that Italy behaved in this way, given that it is widely regarded as being an under-performing power in the EU, starkly illustrated in the talk of a European ‘Big Three’ that excludes Italy, despite it having a similar population and GDP to that of France and the UK.^{xxxiv} These findings are in keeping with the edited volume by Fabbrini and Piattoni who show that Italy is able to achieve its foreign policy goals when there is domestic consensus, as in this case.^{xxxv} They also identify the need for strong individual entrepreneurship (evidenced in the actions of Bonino), and we might also consider this a good foreign policy example of their ‘post “national-interest” paradigm’.^{xxxvi} We should also bear in mind that Italy’s case for permanent or privileged Security Council membership is boosted by demonstrating a strong commitment to human rights. From an EU perspective Italy was not trusted as a ‘safe pair of hands’ over the issue of a death penalty moratorium, given their history of breaking with consensus at the first sight of a deal, and their contribution in 2007 came at a cost to the goodwill between EU diplomats working in New York. Nevertheless, without their political capital it is unclear whether the resolution would have been successful. In short, while we can say they made a *significant* contribution, it is not yet possible to say whether it was a *vital* contribution.

3. The Role of the Presidency: Overstretch

The Portuguese Presidency of the second semester of 2007 was responsible for speaking on behalf of the EU in the UNGA and the Third Committee in New York. Planning began during the German Presidency in the previous semester and included

two important foundation stones; the choosing of co-authors from other regional groups in the UN and the preparation of the EU position.^{xxxvii} Croatia and Albania were identified as members from the Eastern Europe (non-EU) group, while the Philippines and Mexico (where many citizens work abroad in states still using capital punishment) and New Zealand all had long-standing commitments towards the abolitionist position. The question that remained unanswered in the EU was would the Portuguese Presidency be capable of the enormous coordination effort needed, which amounted to three-level bargaining game: intra-EU, EU and co-authors, and entire UN membership in the Third Committee. Waiting one year until the 63rd session (2008) would pass the Presidency to France and also leave more time to reach the 100 co-sponsors benchmark. On the one hand, small Presidencies have the strength of being seen as a neutral arbitrator between competing groups, while France might jeopardise the passing of the resolution if it became widely perceived by third states as being backed by strong national interests. On the other hand the numerical advantage of the French mission in New York, as well as the outreach into the Francophone community (especially in Africa) were strengths that pointed towards delaying action for 12 months. The decision to present a resolution in 2007 under the Portuguese Presidency was ultimately vindicated in its adoption on 18 December, so the question arises as to what contribution to the overall outcome was made by the Portuguese, despite initial fears that it would overstretch the resources of the small member state?

Diplomats credit the Portuguese Presidency as being highly effective at all three levels - securing an EU common position, incorporating the co-authors into the drafting process, and defending the resolution from the hostile amendments of

retentionist states in the Third Committee. When asked why, the commonly cited explanations are skilful negotiation, knowledge of the issue and the ability to draw up median positions, use of COHOM in Brussels when differences in New York became insurmountable, and importantly in the UN context a ‘savvy’ understanding of the UN system and contacts into the UN membership. Let us consider various aspects of the three levels of negotiations in turn.

At the intra-EU level, the usual criticisms of the Union were widely noted. The initial framework of negotiations decided in Brussels through COHOM and informed by national positions was widely out of line with a viable UN consensus. Abolitionist states wanted to maintain maximal language in the text of the resolution, to the point where one could question (a) whether the EU was in touch with reality in the UN, and (b) whether any lessons had been learnt from 1999. The first months of the Portuguese Presidency were spent navel-gazing, insofar as the usual pattern of behaviour (slow reactions, unwillingness to compromise, the need to ‘send’ issues back to Brussels for resolution) marred progress. During this phase the strengths of the Presidency were as a neutral arbitrator between the northern abolitionists on the one hand, and pragmatists (such as Italy) seeking a resolution on the other. Once a compromise was found, the text was taken to the co-authors, where Portugal sat representing the EU as one of ten.

The co-authors’ role is discussed in more detail below, but Portugal’s influence was felt through the inclusion of three Lusophone countries from different regional groups – Angola, Brazil and East Timor. These states would most likely not have been included had Portugal not held the Presidency, and as with all regional co-authors

their contribution was to convince other members of their regional group of the credibility of the resolution and mould consensus around it. Portugal was undoubtedly hamstrung during co-author level negotiations by its inflexibility to agree to changes to the proposed text that crossed the 'red lines' of the various EU member states. However, the skill of the Presidency came into play by relating back to a particular EU member state why they needed to alter their national position. Firstly, the Presidency held a 'monopoly of information' about why a red line might need crossing. Just as EU member states are often reluctant to break consensus when isolated individually, applying pressure by presenting a red line issue as barring consensus between the 27 *and* the nine co-authors was oftentimes effective. Nevertheless, this was a slow and delicate process that did try the patience of the co-authors, who needed to feel they had mutual authorship over the draft rather than operating within the confines of pre-determined EU interests.

The final level of analysis is the presentation and defence of the resolution in the hostile environment of the UNGA Third Committee. One of the key failings identified in 1999 was that by 'all accounts there was little or no oratory in defence of the draft resolution from within the EU camp'.^{xxxviii} The Portuguese Presidency certainly learnt from past experience to correct this shortcoming. Procedure in the Third Committee allows two states to speak in favour and two states to speak against an amendment. When the retentionist states proposed their hostile amendments the co-authors and EU member states were prepared with detailed arguments countering as many conceivable criticisms as possible, to rebuff those seeking to reaffirm national sovereignty over human rights. EU and non-EU diplomats all praised the Portuguese for the highly choreographed, well-orchestrated defence of the resolution. Testimony

to the successful management of the co-authors was the defeat of every amendment in the Third Committee. However, as we shall see later, the Portuguese Presidency worked in conjunction with Amnesty International to prepare these formulaic answers, drawing on their expertise over 35 years of campaigning to provide credible and comprehensive arguments against the death penalty.

On reflection, was the Portuguese Presidency the crucial variable in making this case successful? Given the dedication of the staff, their skill, strategy and careful planning it would seem that the resolution is a coup for Portugal. We can identify areas in which they were highly effective at all three levels – their preparation of an EU median position, their gate-keeping between the EU and co-authors and their stage management of the Third Committee meetings, where in 1999 the EU disintegrated at the crucial moment when it needed to defend its position and retain the support of other states. Yet these strengths originate not in the institutional design of the Presidency, nor in the preparation in Brussels, but in the diplomatic staff in New York. Success in this case rests on the skills of the people involved, including their knowledge of the UN and networks between EU diplomats, other UN members and the NGO community. Oftentimes the ability of all EU diplomats to articulate the position in New York to their superiors in national capitals was necessary in order to reach consensus on the resolution. In this example, the overstretch was not in terms of a small member state presidency, but in going beyond the call of duty to make this work.

4. The Role of the Co-authors: Outreach

Another major difference between 2007 and 1999 was the inclusion of nine non-EU states as co-authors of the resolution. They were: Albania, Angola, Brazil, Croatia, Gabon, Mexico, New Zealand, Philippines, and Timor-Leste, and alongside Portugal meant that each region was represented by two states. All were subject to widespread resentment from retentionist states, who regarded them as stooges for the EU. The criticism levelled against them was that they had no input into the process and were lending false credibility to the resolution by allowing it to be presented as cross-regional. It is interesting that some states that supported the resolution also saw them in this light, and some diplomats from within the EU were initially disheartened by the fact that the nine appeared to expect the EU to do the majority of the work. Countering this, however, are the assertions from within the nine that they regarded themselves as fully participating members, and testimonies paid to the diplomats of Brazil, Gabon and Mexico in particular who worked tirelessly in the face of criticism to promote widespread acceptance of the resolution. The two questions that concern us are firstly whether the nine played a vital role in the success of the resolution, and secondly what can be learnt for the future from EU and non-EU co-authoring?

When asked about the credibility of the EU 'brand' in the UN, a number of EU and non-EU diplomats spoke of distrust and hostility towards the Union. One was sure that if two identical documents were drafted, one by the EU and the other one by another group, the former would be regarded with suspicion while the latter would not. Another commented on how developing states knew that they could not trust the Americans, and knew the reason was because the US pursued its national interests. Developing states also knew they could not trust the EU, but did not know why they could not trust it, other than its positions were opaque bargains between EU member

states who did not speak out directly. Bearing this in mind and recalling the 1999 failure, a broad congregation of non-EU states was highly important in achieving widespread support for the resolution and co-authors from the five regions were charged with promoting the resolution in their groups.

Turning to the second question, what lessons for the future can be learnt from the experience of co-authoring a resolution with non-EU states? Answers are dividable into two broad categories, those concerning the EU, and those concerning non-EU states. Beginning with the latter, the nine in this case study were generally very supportive of the EU, and aware of the position the Portuguese found themselves in with regard to a narrow negotiating mandate. The nine did not meet together without the EU (Portugal) present, which they could have done if they wanted to strategise ways for extracting concessions from the Europeans.^{xxxix} The nine were nevertheless frequently frustrated with the slowness of agreement and the feeling that the EU position was constraining their room for manoeuvre. Matters came to a head when they requested a meeting with the whole EU 27 in order to put a number of arguments forward intended to consolidate the negotiations that were progressively shifting the focus from abolition to a moratorium. At this meeting the issue of the title was raised, which at the time still called for the abolition of the death penalty, although the language of the resolution had altered considerably. The co-authors, led by Mexico, agreed to change the title while the Presidency asked to pause and allow consultation between the EU 27, which was denied. For many this represented a watershed, as the co-authors began feeling like equal partners in the process, while some onlooking EU diplomats saw this as the moment they lost control of the resolution.

What the EU can learn from the process? The most obvious is that a median position between 27 will still require further compromises to be made, and if the co-authorship process is to be sincere this means losing some arguments. One of the hardest lessons for the EU to learn is that it cannot work with co-authors and expect to remain ‘in control’ of the drafting process, if control means the retention of 27 ‘red lines’ over content. The EU cannot have its cake and eat it, namely bring co-authors on board to help it pass resolutions through the UNGA and expect to remain in the driving seat. In any case, this would seem to be an inadvisable course of action recalling the earlier distinction between pragmatic consensus and the fantasy-politics of the initial EU draft text.

In conclusion, the co-authors played an important role in tempering the content of the resolution in line with what was acceptable to the UNGA, and in defending the resolution so staunchly in the face of hostility from retentionist states, thereby shaking their label of junior partners. They were praised for their succinct and convincing arguments, yet looking a little more closely reveals that these arguments were the product of a defensive strategy prepared and choreographed principally by the Portuguese Presidency, suggesting perhaps that the EU was first amongst equals after all.

5. The Role of the NGO Community: Unsung

We have considered the role of three factors in the preparation of this resolution and it is now time to turn to one that remained on the margins in terms of active participation in the UN, but nonetheless played an important role in the eventual

success of the resolution. The non-governmental organisation (NGO) Hands off Cain has already been mentioned in its activism role in Italy and around the world, but the primary NGO actor to consider is Amnesty International (AI). Amnesty has been promoting human rights since the 1960s and has 35 years experience campaigning against the death penalty. Amnesty is strongly abolitionist and highly concerned about the risk of failure, resulting it is '100 co-sponsors' threshold for action. While Amnesty is widely recognised as an advocacy group outside the UN, it also played an important role in the successful adoption of the resolution from *inside* the drafting process. The 'AI at the UN' office worked closely with the Portuguese and New Zealand co-authors, receiving daily briefings from them on progress at critical moments, as well as being instrumental in the drafting of the Presidency prepared answers in defence of the resolution from hostile resolutions. While it may be an exaggeration to say that AI was the power behind the throne, it was certainly a silent partner in the drafting process, and a vocal advocate lobbying during the voting process.

The decision to support the death penalty resolution co-authored by the EU might at first glance seem like an obvious one for Amnesty International – how could they *not* support the action? However, it was not so clear-cut given initial fears of concessions to retentionists and once AI had decided to support the action, the decision remained within a small circle of staff so as to grant the organisation some bargaining power in New York. Strong lines of communication existed between AI and a number of abolitionist states (both EU and non-EU) as well as into the EU Presidency, and Amnesty set out a number of conditions that were its own 'red lines' over what it was prepared to give its approval to. Exactly how credible the idea is that an NGO set out

conditions of support to the co-authors via their channels of communication into the process is debatable. Intergovernmental and realist views of international relations have little room for international organisations, let alone NGOs. What meaningful sanctions could AI have threatened if its conditions had not been met? Why would states accommodate the views of a non-state actor? The idea seems fanciful and over-indulgences NGOs with a sense of importance in world politics that is misplaced. Contrary to this, however, is evidence that Amnesty played an important advocacy role that cannot be disputed in its significance.

As soon as the decision was taken at the end of the German Presidency to submit a resolution in the 62nd Session, Amnesty began lobbying support through their global network. This included raising awareness and organising activists, as well as talking to governments. According to the organisation itself, when it lobbied the South Korean government it was told that no EU member state had raised the issue with them, making AI the only point of contact. In New York on 31 October 2007 Amnesty brought together three innocent men from Japan, Uganda and the US who had been reprieved after spending time on death row to highlight the issue.^{xi} Diplomats talked of the galvanising effect this had on all who attended, and gave the co-authors a renewed incentive to pass the resolution. During the final Third Committee meetings the co-authors defended their resolution using the arguments refined by Amnesty long history of campaigning, as well as drawing on Amnesty's expertise in considering all angles from which attacks could come. The Portuguese and New Zealand missions worked closely with the AI, although some of the other co-authors were unaware of the Amnesty's influence. Finally, during the month between the resolution being passed in the Third Committee and the record vote in the

General Assembly, Amnesty monitored the positions of the ‘swing states’ needed to win the vote, and lobbied hard to persuade them to support the resolution.

In many ways the role of Amnesty International in the passing the resolution calling for a moratorium on the death penalty is hardest to measure, since much of it was through discrete channels and hidden from even some of the co-authors. While it is difficult to argue that the EU-led initiative would not have taken place without the support of Amnesty, it is less obvious that it would have succeeded without them. The defence of the resolution was one of the success stories of this case study, and it seems credible that their expertise was utilised to script the answers given, and thus see the resolution through the Third Committee unchanged. Their advocacy in lobbying states also helped consolidate the resolution in the UNGA, and ultimately led to the successful breakthrough sought by all parties concerned. As with the three other perspectives discussed here, the ‘unsung’ role of AI cannot be singled out as the crucial variable, but certainly played an important role. At the very least, the passage of the resolution would have been stormier; at worst it would have contained amendments that risked damaging the abolitionist cause, not furthering it.

6. Conclusion: A Model for Future Action

As should be clear by now, not one of the four factors can be singled out as being the crucial ingredient explaining the successful adoption of the moratorium on the death penalty. Instead a constellation was required to get results, in which political capital from Italy, a capable and resourceful Presidency, a group of motivated co-authors and the expertise of Amnesty International came together to produce a landmark

resolution in the UN. However, six things can be said by way of conclusion that summarise the arguments presented here; two that are surprising, two that are to be expected, and two that speak to the question of the EU and the UN. Firstly, this case study details an assertive Italian foreign policy objective being reached, which to many may sound like an oxymoron. 14 years after Italy's first attempt, the UNGA adopted a resolution on the death penalty, which undoubtedly was assisted by the EU, thus placing the Union at the service of one of its largest members. Cross-party political consensus on the issue would appear to be an important factor, supporting arguments made about the need for domestic unity in Italian foreign policy. The second conclusion that is equally surprising is the Janus-faced role of Amnesty International in the drafting and voting processes, privately working very closely with a select group of co-authors, while publically campaigning for adoption of the instrument with wavering states in the wider UNGA. These findings point to the ability of non-state actors to shape international politics, albeit within confines of the multilateral system centred on the United Nations. Less surprising are the third and fourth points, which are that the EU Presidency played an instrumental role in coordinating the EU member states' positions, and that the inclusion of co-authors gave considerably more credibility to the resolution. It would have been far more unexpected if evidence contradicting these findings were found. As has been discussed above, co-authors helped mitigate against opposition towards the EU 'brand', while the resolution's success was undoubtedly in part due to the 'reality-check' given to the EU and its abolitionist hard-liners. Fifthly, the EU has some lessons to learn, principally that it cannot make policy in the vacuum of Brussels and needs to be plugged into the UN system on the ground through its diplomats in New York. In this case, promoting the death penalty was not through not carrots, sticks, or

normative power,^{xii} but instead through using rhetoric, logic and reason to make more convincing arguments. Sixthly, what does the passing of this resolution in the traditional bastion of the South say about the North-South division? The 54 votes cast against it do not constitute the remainder of the South, in the sense that the majority is now 'North'. A more accurate view is that human rights are no longer politicised through the prism of development where support for human rights amounts to acquiesce with former imperial powers. The majority of supporters of this resolution are also signatories to the Rome Treaty of the ICC (a noteworthy exception is Russia, which can be explained by its Council of Europe membership). Far more significant is a state's concern for protecting national sovereignty against its perceived erosion by international institutions. Emerging from this is a new dichotomy between progressive and conservative states that is not based on structural relations in the international system, but instead on domestic political ideology.

* I would like to thank Alberta Sbragia, Karen E. Smith and William Vlcek for helpful comments on an earlier draft of this text.

ⁱ United Nations document [A/62/439/Add.2](#). Resolution adopted in a record vote in the UNGA 18 December 2007, (76th & 77th Meetings) by a 104 in favour to 54 against, with 29 abstentions. See Press briefing [GA10678](#).

ⁱⁱ UN: [GA10678](#) and AI: [IOR 40/025/2007](#) (Public) (Both 18 December 2007).

ⁱⁱⁱ Ilias Bantekas & Peter Hodgkinson 'Capital Punishment at the United Nations: Recent Developments' *Criminal Law Forum* 11:1, 2004, pp. 23-34, p.24.

^{iv} Article 2(7) states: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.'

^v *Annual Report of the Secretary General of the Work of the Organisation* UN Doc. [A/54/1](#) (1999).

^{vi} Ronald I. Melzter, 'Restructuring the United Nations System: Institutional Reform Efforts in the Context of North-South Relations', *International Organization*, 32:4, 1978, pp. 993-1018.

^{vii} Gwyn Prins, 'Lord Castlereagh's return: the significance of Kofi Annan's High Level Panel on Threats, Challenges and Change' *International Affairs*, 81:2, 2005, pp 373-391, p.386; Also see Edward C. Luck, 'How Not to Reform the United Nations' *Global Governance*, 11(4), 2005, pp.407-414.

^{viii} David M. Malone & Lotta Hagman, 'The North-South Divide at the United Nations: Fading at Last?' *Security Dialogue*, 33:4, 2002, pp. 399-414, p.399.

^{ix} Malone, 'North-South', p. 401.

^x See Press Release [GA/SHC/3906](#) (15 November 2007).

- ^{xi} EU-Council, *European Security Strategy: A Secure Europe in a Better World* (Brussels, EU Council of Ministers, 2003)
- ^{xii} I would like to thank the 14 diplomats who found time to talk to me during the week 31 March - 4 April 2008. Personal interviews were carried out under the Chatham House Rule, and thus to maintain their anonymity no reference to their nationalities is made.
- ^{xiii} The terms 'death penalty' and 'capital punishment' are both used to describe the execution of prisoners, but are unquestionably value-laden. 'Death Penalty' is preferred by those seeing it as a human rights issue, while 'capital punishment' reiterates its relationship to criminal law and domestic legal practice.
- ^{xiv} Bantekas, 'Capital Punishment', p.24.
- ^{xv} In 2007, of the 53 states in the Africa region, 17 voted for the resolution, 11 voted against, 20 abstained and 4 did not vote.
- ^{xvi} Bantekas, 'Capital Punishment', p.31.
- ^{xvii} UN doc [A/C.3/62/L.68](#).
- ^{xviii} Personal interviews, New York, 31 March – 4 April 2008; Bantekas, 'Capital Punishment' notes than in 1994 the Italian resolution was not co-sponsored (among EU states) by the UK because they had not yet ratified the ECHR Protocol 6 and were closer to the retentionist position, while the Netherlands were concerned about potentially detrimental effects to the abolitionist cause. p.24
- ^{xix} UN doc [A/C.3/49/SR61](#).
- ^{xx} UN docs [A/C.3/54/L.31](#); [A/C.3/54/L.32](#).
- ^{xxi} Bantekas, 'Capital Punishment', p.34.
- ^{xxii} Karen E. Smith 'Speaking with One Voice? European Union Co-ordination on Humans Rights Issues at the United Nations', *Journal of Common Market Studies* 44:1, 2006, pp.113-37
- ^{xxiii} Karen E Smith, 'Speaking With One Voice but Having Little Impact: The EU at the UN's Human Rights Council' paper presented at 49th [International Studies Association Conference](#), San Francisco March 2008
- ^{xxiv} Bantekas, 'Capital Punishment', p.29.
- ^{xxv} Martha Finnemore and Kathryn Sikkink 'International Norm Dynamics and Political Change' *International Organization* 52:4, 1998 pp. 887-917.
- ^{xxvi} Bantekas, 'Capital Punishment', p.33.
- ^{xxvii} Personal interviews, New York 31 March – 4 April 2008. Bonino also worked on the 1994 Moratorium on the death penalty in the UNGA. See her statement on the UNGA 2007 resolution: http://coranet.radicalparty.org/pressreview/print_right.php?func=detail&par=14516 (Accessed 10 April 2007)
- ^{xxviii} <http://english.nessunotocchicaino.it/> (Accessed 10 April 2008)
- ^{xxix} http://coranet.radicalparty.org/pressreleases/press_release.php?func=detail&par=8437 (Accessed 10 April 2008)
- ^{xxx} Personal interviews, New York, 31 March – 4 April 2008. For the diary of the Italian Foreign Minister see: <http://www.esteri.it/MAE/EN/Ministero/Ministro/Missioni.htm> (Accessed 10 April 2008)
- ^{xxxi} Frattini, Franco. Speech 'Europe Against the Death Penalty' Lisbon, 9 October 2007. See: <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/612&format=HTML&aged=0&language=EN&guiLanguage=en> (Accessed 10 April 2008)
- ^{xxxii} http://www.radicalparty.org/special/index_en.php (Accessed 10 April 2008)
- ^{xxxiii} Personal interviews, New York, 31 March – 4 April 2008.
- ^{xxxiv} Antonio Missiroli, 'Italy', in Ian Manners & Richard G. Whitman, eds, *The Foreign Policies of European Union Member States* (Manchester, Manchester University Press, 2000)
- ^{xxxv} Sergio Fabbrini & Simona Piattoni, eds, *Italy in the European Union: redefining national interest in a compound polity* (Lanham, Md.: Rowman & Littlefield, 2008).
- ^{xxxvi} Fabbrini and Piattoni, 'Italy', Introduction pp.13-18; Conclusion, p.252.
- ^{xxxvii} EU Council Document: 'EU Action in UN fora for the abolition of the death penalty – President proposal for the way ahead' [10593/07 Rev.3](#) (19 June 2007). The title suggests that initially the common position centred on an abolitionist text.
- ^{xxxviii} Bantekas, 'Capital Punishment', p.33.
- ^{xxxix} For example, either with coordinated threats to leave the negotiations, or to strengthen their bargaining position by making demands that they knew the EU could not agree to in order to force concessions.
- ^{xl} <http://www.amnesty.org/en/news-and-updates/feature-stories/stop-death-penalty-worldwide-abolition-now-20071031> (Accessed 12 April 2008)

^{xli} Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' *Journal of Common Market Studies*, 40:2, 2002, pp. 235-258; Ian Manners, 'The European Union as a Normative Power: A Response to Thomas Diez' *Millennium: Journal of International Studies*, 35:1 2006, pp. 167-180.