

The amendment confounds the relationship between human rights and sovereignty

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Summary: Singapore proposes an amendment to the death penalty moratorium resolution that mischaracterizes the relationship between sovereignty and the promotion of human rights in the UN Charter. The amendment purports to reaffirm “the sovereign right of all countries to develop their own legal systems, including determining appropriate legal penalties, in accordance with their international law obligations.” All Member States are respectfully encouraged to vote against the amendment and in favor of the resolution.

The UN Charter’s sovereign equality principle is not about “sovereign rights.”

- In the context of the General Assembly, the “principle of sovereign equality” (Art. 2(1)) recognizes that all Member States are formally equal participants in the UN system, regardless of size or status.
- The principle of sovereign equality of UN Member States may find its origins in the 1943 Four Power Declaration issued by China, the USSR, the United Kingdom, and the USA. The parties declared the need to establish “a general international organization,” which would ultimately become the United Nations, “based on the principle of the sovereign equality of all peace-loving States,” meaning that all states are equal before international law.
- The UN Charter’s principles include “the principle of [the] sovereign equality,” (Art. 2(1); Art. 78), not a “sovereign right” to take a particular action. (Art. 2, para. 1: “The [UN] is based on the principle of the sovereign equality of all its Members.” Art. 78: “The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.”)
 - The principle of “sovereign equality” also appears in: the Millennium Declaration; the International Convention against the Recruitment, Use, Financing and Training of Mercenaries; the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the UNESCO Declaration on Race and Racial Prejudice; and the Declaration on the Right to Development.
- This principle should be read in conjunction with one of the purposes of the UN, which is to promote respect for human rights. Art. 1(3) affirms that one purpose of the UN is “[t]o achieve international co-operation . . . in promoting and encouraging respect for human rights,” Art. 55(3) recognizes that one purpose of the UN is to “promote . . . universal respect for, and observance of, human rights and fundamental freedoms,” and Art. 56 contains the pledge of Member States “to take joint and separate action in co-operation with the [UN] for the achievement of” that purpose.
- A State’s status as sovereign (or otherwise) is not inconsistent with the promotion and protection of human rights. The Universal Declaration of Human Rights recognizes that all persons are entitled to rights, without distinction based on the status of the person’s country, “whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.” (Art. 2)
- The resolution is consistent with the principle of sovereign equality, welcoming the participation of all Member States as equals before international law, consistent with Arts. 1(3), 55 & 56.
- The proposed amendment is a confusing and unessential component of the resolution. The amendment’s reference to “sovereign right” risks creating an artificial distinction between the principle of sovereign equality and human rights.

The Charter is silent on "sovereign rights."

- The Charter never references a State's "sovereign right," while it mentions rights 20 times.
 - In the majority of those cases, the Charter refers to the rights of humans or peoples. (Preamble ("fundamental human rights" "equal rights of men and women"); Art. 1(2), Art. 55 ("equal rights and self-determination of peoples"); Art. 1(3), Art. 13(1)(2), Art. 55(3), Art. 62(2), Art. 68, Art. 76(3) ("human rights"); Art. 80(1) ("the rights . . . of . . . any peoples").
- The Charter refers to "rights" of States and other entities either vaguely or in very narrow circumstances, specifically recognizing only two affirmative, non-procedural "rights" of States: the "right of self-defence" and the "rights and benefits resulting from membership" in the UN itself.
 - Vaguely: "faith . . . in the equal rights of men and women and of nations large and small" (Preamble); "without prejudice to the rights, claims, or position of the parties concerned [in considering measures under Articles 41-42]" (Art. 40); "nothing in this Chapter shall be construed . . . to alter . . . the rights whatsoever of any states or any peoples" (Art. 80(1)).
 - Narrowly: "rights and benefits resulting from membership [in the UN]" (Art. 2(2)); "rights and privileges of membership" (Art. 5; Art. 18(2)); "right to consult the Security Council" if the Council takes enforcement measures against a State (Art. 50); "right of individual or collective self-defence" (Art. 51); "rights of passage" for armed forces maintaining international peace and security (Art. 43(1)).
- The Third Committee, tasked with agenda items relating to human rights issues, should tread carefully when considering text asserting the "rights" of States.

The Charter's recognition of domestic jurisdiction does not undermine international human rights obligations.

- As a non-binding instrument, the resolution transparently promotes and encourages respect for human rights in relation to the death penalty, consistent with the UN's purposes in Art. 1(3), Art. 55(3), and Art. 56.
- Art. 2(7), which seems to form the basis for the proposed amendment, speaks to the principle of non-intervention of the UN in certain domestic matters of 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
- This non-intervention principle is not relevant to the spirit and purpose of the resolution.
- All Member States can and must develop their own legal systems, including the application of appropriate legal penalties. But those obligations are not a shield against recognition of human rights obligations.
- For example, if a country criminalizes the observance of a particular religion, or peaceful demonstrations opposing a State action, or the publication of information about human rights, Art. 2(7) does not allow the country to evade international scrutiny of such laws.

Calls for "balance" within the resolution are inapt.

- The resolution encourages States to exercise authority under their domestic laws to act in a manner reflecting the current status of the death penalty within their jurisdictions: It calls on abolitionist States not to reintroduce the death penalty; it calls on States with a moratorium to maintain it; and it calls on states that have not yet done so to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
 - It may be worth noting that the Member State introducing the amendment is not itself a party to the ICCPR, a treaty central to the question of the death penalty.
- Calls for "balance," or recognition that States may elect *not* to exercise their authority in such a way, are redundant, and risk creating an incoherent text. They are akin to peppering a resolution on the rights of the child with references to the rights and interests of older persons.