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Outreach, Overstretch or Underhand? EU 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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Abstract:

This paper looks at the role played by the European Union in the successful passing a ‘landmark’ resolution in the 62nd (2007) United Nations General Assembly calling on all states still using capital punishment to establish ‘a moratorium on executions with a view to abolishing the death penalty’. The resolution marks a watershed in the balance between abolitionist and retentionist states among the 192 UN members. The EU co-authored the resolution with nine non-EU states. This paper looks at the respective roles of Italy, the strongest advocate of the need to pass a resolution among the EU member states, the Portuguese EU Presidency, the nine co-authors, and Amnesty International in passing the resolution. It argues that all four formed a ‘constellation’ of necessary conditions making the resolution successful. Four lessons are drawn from this case study about successful EU action in the UN. They are: (1) the EU cannot operate in a vacuum in the UN, (2) the EU must see co-authors as equal partners in the drafting process, (3) ‘many voices, one message’ approach works well when trying not to alienate states from EU positions, and (4) the network of diplomats in New York are of vital importance because they allow the EU to look inward and outward looking simultaneously.

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’.¹ The resolution was hailed as a ‘landmark’ by both the United Nations and Amnesty International,² 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’³ or as being an affront to fundamental human rights. Retentionist states 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.⁴ Abolitionist states 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. We can therefore see it as a milestone 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’.⁵

Where 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,

¹ 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](#).

² UN: [GA10678](#) and AI: [IOR 40/025/2007](#) (Public) (Both 18 December 2007).

³ Bantekas & Hodgkinson 2004 *Capital Punishment at the United Nations: Recent Developments Criminal Law Forum* 11:1, 23-34, p.24

⁴ 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.’

⁵ *Annual Report of the Secretary General of the Work of the Organisation* UN Doc. [A/54/1](#) (1999)

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 weaken or ‘wreck’ the resolution, which will be described in more detail below) by 99 votes in favour to 52 against (with 33 abstentions).⁶ 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 among themselves. This raises the question of whether the EU is finally becoming the effective multilateral actor it claims to be in the 2003 European Security Strategy, and whether it can use the UN to win the argument for an international order based on the rule of law and respect for human rights, cited widely as being core EU values. 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.⁷ The paper proceeds in six sections. The first gives a brief history of efforts to outlaw capital punishment in the UN. The following four sections look at (2) the role of the Italian government, (3) the role of the Portuguese Presidency, (4) the role of the nine co-authoring non-EU states and (5) the role of non-governmental organisations, especially Amnesty International (AI) and argue that the resolution passed thanks to a fortuitous constellation in which all four aspects were mutually beneficial. The conclusion focuses on whether similar policy initiatives will be

⁶ See Press Release [GA/SHC/3906](#) (15 November 2007)

⁷ I would like to thank the 13 diplomats who found time to talk to me during the week 31 March - 4 April 2008. Interviews were carried out under the Chatham House Rule, and thus to maintain their anonymity no reference to their nationalities is made.

possible in the future given the complex inter-relation of the necessary elements, and provides four lessons that can be learnt from this case study for improving EU effectiveness in the UN.

1. The background story: EU past experiences outlawing 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.⁸ For many years Amnesty International has kept a record of where states stand on 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 has 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.⁹ Elsewhere in the Western Europe and Other Group (WEOG) in the UN Australia, Canada and New Zealand have adopted abolitionist positions, while the US remains staunchly retentionist. The majority of Central and South American states are also abolitionist, although Caribbean states (grouped as CARICOM) remain staunchly retentionist. The majority of Asian states and Arab states are also retentionist, while African states are increasingly divided as more give up the death penalty, including Rwanda in 2007. In votes concerning the abolition of the death penalty, changing attitudes in Africa hold the balance of power in the General Assembly.¹⁰

⁸ 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.

⁹ Bantekas & Hodgkinson 2004: 24

¹⁰ 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.

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. Their preferred UN forum for discussion of the issue is 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.¹¹ 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).¹²

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 and one in which the United Nations can have 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.¹³ As we shall see below, the issue led to the disintegration of a common European position in the UNGA Third Committee in 1999.

¹¹ Bantekas & Hodgkinson 2004: 31

¹² UN doc [A/C.3/62/L.68](#)

¹³ Interviews, New York, 31 March – 4 April 2008; As see Bantekas & Hodgkinson note 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. (2004: 24)

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. The first attempt to pass a resolution on the death penalty in the UNGA Third Committee was led by Italy in 1994, its drafted document attracting 49 co-sponsors but voted down by retentionist states.¹⁴ The second attempt in 1999 was under the Finnish Presidency when it drafted a resolution on the ‘Question of the Death Penalty’.¹⁵ The resolution was authored by the EU member states and co-sponsored by WEOG, Central and Eastern European states, Group of Latin American Countries (GRULAC) and a few African states. Despite having 75 co-sponsors it failed to include any Caribbean, Islamic (IOC) or Asian states, who widely resented what they felt was the North dictating new terms of sovereignty to the South. Singapore and Egypt spearheaded the retentionist response, preparing two ‘wrecking’ amendments that introduced language into the document intended to subordinate human rights to sovereign autonomy. By the time the Third Committee met to discuss the proposed amendments, 80 co-sponsors had been collected and it was clear to all that the inevitable adoption of these two amendments would result in the EU authored resolution setting the abolitionist cause back, rather than furthering it.¹⁶ In the face of the hostile amendments EU cohesion disintegrated, with open disagreements between EU member states themselves, and between the EU and the other co-sponsors. In a last-ditched effort to save the resolution, Mexico drafted a compromise amendment that made reference to Articles 2(7) and 1(3), thus emphasising the rights of states to non-intervention and to human rights, yet this was still unacceptable for abolitionist states among the EU. In the end the decision was taken by both sides ‘not to take any further action’ and avoid the ‘humiliation’ of withdrawing the resolution. 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’.¹⁷

¹⁴ UN doc [A/C.3/49/SR61](#)

¹⁵ UN doc [A/C.3/54/L.8 Rev.1](#)

¹⁶ UN docs [A/C.3/54/L.31](#); [A/C.3/54/L.32](#)

¹⁷ Bantekas and Hodgkinson 2004: 34

The EU's 1999 decision to submit a resolution to the UNGA Third Committee was encouraged by the Italian government led success in the Commission on Human Rights (CHR), a sub-committee of the Economic and Social Council (ECOSOC). Italy drafted and successfully steered through the CHR two resolutions on the death penalty in 1997 and 1998 with fell EU member state support, and in 1999 the EU drafted its first resolution on the same issue through the Presidency, and this success spurred it on to submit a near-identical resolution in the Third Committee in 1999. Despite failing in New York that year, the EU continued to pass yearly resolutions on the death penalty in Geneva until 2005.¹⁸ One of the reasons for EU success in the CHR was the composition of the 53 member states, which were elected from regional caucuses that favoured WEOG and Latin American states over Asian and African.¹⁹ By contrast, the UNGA Third Committee is open to all UN members, (currently 192) and thus the voice of African and Asian states is heard louder there. The regional bias of the CHR, its inclusion of human rights violating states, and excessive politicisation are the primary reasons why it was replaced with the Human Rights Council (HCR) as part of the UN reform programme instigated by Kofi Annan's *In Larger Freedom* report to the 60th General Assembly.²⁰ The HCR is a permanent body designed to address the shortcomings of the CHR, although as Karen Smith notes, the HCR has succumbed to other problems, most notably its members' unwillingness to comment on some HR violations that has led the EU to shift from a proactive to reactive position. In the context of the abolitionist movement, the EU has not submitted resolutions against the death penalty in the HCR in contrast to its history of engagement with the issue in the CHR. A paradox can therefore be observed: success passing a resolution in the CHR was the initial spur for the failed UNGA resolution in 1999, suggesting that the former was more open to the EU's position than the latter. In recent years there has been a reversal with the EU failing to promote the abolitionist cause in the HCR while nevertheless succeeding in UNGA. When asked to comment

¹⁸ Karen E. Smith 2006 *Speaking with One Voice? European Union Co-ordination on Human Rights Issues at the United Nations* Journal of Common Market Studies 44:1, 113-37

¹⁹ In the Commission on Human Rights the WEOG, Eastern Europe and Latin America groups collectively held 26/53 seats (one below an absolute majority). In the Human Rights Council the three groups hold 21/47 seats (three less than an absolute majority). While it has already been stated that there are no hard-and-fast rules on how regions will vote, the relative decline is significant. See Karen E Smith, 2008 *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.

²⁰ Smith, 2008

on this, EU diplomats explained that the official EU position on the HCR is that it is a new institution and the EU is working towards its long-term success. However, they also conceded that in the short term the UNGA might prove to be a more fruitful avenue of human rights advocacy in the face of conservatism in the HRC.²¹

The final issue to briefly touch upon is the middle way between retention and abolition – a moratorium. The 2007 UNGA resolution calls for a moratorium on the use of the death penalty, which was seen by the co-authors as a sensible path between the two extremes, most importantly because it allows states to retain the punishment on their national statutes while committing to stop using it. Agreeing to the moratorium does not require states to follow-up with legal changes domestically and thus provides a considerable amount of leeway across the spectrum of positions within the UN. However, within the EU this seemingly commonsensical position was obscured for a long while. The argument against this approach is that it settles the debate at too low a common denominator explicitly because it does not commit governments to remove 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 disaster and have chosen instead a strategy of biding their time until they knew the argument could 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 would lead to the drafting and acceptance of 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 argue that any resolution is a step in the right direction, and incremental change can take place only after the death penalty has been brought to the table. Italy has long held this position, evidenced by the argument of Roberto Toscano that the 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.²²

²¹ Interviews, New York, 31 March – 4 April 2008.

²² Bantekas and Hodgkinson 2004: 29

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, or whether the rest of 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: Underhanded?

‘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 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. As already mentioned, Italy took the lead in preparing the first resolution submitted to the UNGA Third Committee regarding the death penalty in 1994, and although unsuccessful did start the process of recognising the death penalty as something other than a domestic legal question. Italy was also instrumental in passing two resolutions on the death penalty in the Committee on Human Rights in 1997 and 1998, which can be seen as the antecedents to the EU resolutions from 1999 to 2005. In this sense, Italian diplomats have played the role of norm entrepreneurs both in the EU and in the UN, defining new norms of behaviour through their campaigning.²³ However, taking a more critical view one might regard their willingness to see a death penalty resolution passed as over-riding their concern for what is actually said, evidenced by Italian willingness to accept the Egyptian ‘wrecking’ amendment to the 1999 Third Committee resolution for the sake of consensus.²⁴

Italian domestic politics also played a significant role in driving the resolution forward. Despite having one of the broadest political spectrums in the EU and its short-lived ruling coalitions, opposition to the death penalty is crosscutting through all 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

²³ See Finnemore and Sikkink 1998 *International Norm Dynamics and Political Change* International Organization 52:4, 887-917.

²⁴ Bantekas and Hodgkinson 2004: 33

penalty part of her party's election manifesto.²⁵ The explicit commitment from one of the governing partners towards this end explains 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 has worked with Bonino for this goal.²⁶ One only needs to look at one of their press releases 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).²⁷ 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 a day before.²⁸

Italian support for a resolution against the death penalty came from within the European Commission too. The 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.²⁹

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 also publicised the campaign against the death penalty through his Radical

²⁵ 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)

²⁶ <http://english.nessunotocchicaino.it/> (Accessed 10 April 2008)

²⁷ http://coranet.radicalparty.org/pressreleases/press_release.php?func=detail&par=8437 (Accessed 10 April 2008)

²⁸ 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)

²⁹ 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)

Party in Italy, and through undertaking protests such as hunger strike.³⁰ 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 that they did not all share Italy's willingness to compromise with retentionist states in order to pass a resolution.

What impact did Italian enthusiasm for a death penalty resolution have on the normal operating procedures of the EU, the circle of European diplomats in New York, the coordination reflex, the desire to maintain consensus, the established procedures of negotiating between member states, and the role of the Presidency? To begin with, while Italy was willing to spend a lot of political capital on seeing the resolution passed, the Italian national position lay very far away from those of Netherlands, Sweden, and Denmark, which were reluctant to move away from strict abolitionist language. The efforts of the EU Presidency to carefully negotiate EU positions between the 27 member states were laborious (especially in the early months of negotiations), as the instructions from national capitals were often contradictory. On a number of occasions referrals were made 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. A number of diplomats recalled occasions during these negotiations 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, unaware of the detailed content of negotiations, 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.

³⁰ http://www.radicalparty.org/special/index_en.php (Accessed 10 April 2008)

A second issue to consider is the outreach from EU member states to the rest of the UN membership. As in Geneva, where a ‘buddy’ system allocates EU and non-EU members together for outreach purposes, 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’.

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, especially France and the UK with their roles as permanent members of the UN Security Council. What can be said is that Italy were 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. At times Italy did throw the rulebook out the window, but this is not the first time this has happened and 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. Added to this, we can also note that their contribution did come at a cost to the goodwill between EU diplomats working in New York.

3. The Role of the Presidency: Overstretched?

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.³¹ Croatia and Albania were identified as members from the Eastern Europe (non-EU) group, while New Zealand, the Philippines and Mexico 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, regarded by Amnesty International as the minimum level required for success. 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 widely 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

³¹ 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.

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 played a significant role in introducing three Lusophone countries from different regional groups – Angola, Brazil and East Timor – into the process. 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. The

personal relations between diplomats, and the honesty, integrity and credibility of the Presidency shaped outcomes. Serving as the interface between the EU member states and the co-authors was not an impossible job due to the unique gate-keeping qualities privileged to the Presidency, namely the selective relaying of information about negotiations on both sides. 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 co-authoring process therefore presented the Presidency with new problems, but also provided strategies for tackling these problems through extensive and frequent communication between New York-based EU diplomats.

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’.³² The Portuguese Presidency certainly learnt from past experiences 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 given detailed arguments countering as many conceivable criticisms as possible, rebuffing 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.³³ 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.

³² Bantekas and Hodgkinson 2004: 33

³³ Anecdotally, when a CARICOM state asked to vote on every line of the resolution separately, the Philippines representative stood up and gave an impassioned but unscripted reply. After finishing, the chair asked if he was in favour or against the proposal, at which point he paused, before answering (correctly) that he was against it. Those present recall this as a heart-stopping moment in which the carefully prepared work could have been ruined.

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 that 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. Some had particular interests in the abolition of the death penalty internationally, such as Mexico and the Philippines where many citizens work abroad in states still using capital punishment. Others had linguistic ties to Portugal, but they shared in common a widespread resentment towards them 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, and whether it was trusted and credible, 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 knew they could not trust the EU, but did not know why they could not trust them, other than their positions were opaque bargains between EU member states who did not speak out directly.³⁴ Bearing this in mind and recalling the 1999 failure, a broad congregation of non-EU states was highly important in achieving widespread acceptance of the resolution. Co-authors from the five regions were charged with promoting the resolution in their regions, facilitating sympathetic states to vote for the resolution or abstain. Thus on the one hand the nine were independent and assertive, helping shake the label of junior partners within the drafting process. On the other hand, the co-authors participated in the assertive defence of the resolution from hostile amendments by using the arguments prepared and choreographed principally by the Portuguese Presidency, suggesting that perhaps the EU was first amongst equals after all.

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

³⁴ The example ironically echoes US Secretary of Defence Rumsfeld's known knowns and known unknowns.

into two broad categories, those concerned with the EU, and those concerned with the 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.³⁵ 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 the nine requested a meeting with the whole EU 27 in order to put a number of arguments forward intended to consolidate the negotiations which 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 watermark moment, insofar as the co-authors felt equal partners in the process, while some onlooking EU diplomats saw this as the moment they lost control of the resolution.

This leads on to the second point, which is 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 employ co-authors and expect to remain ‘in control’ of the drafting process, if control means the retention of 27 ‘red lines’ over content. If this is the objective, then the solution is to allow the 27 and the co-authors to work as ‘equals’ in one negotiating forum, but this would be a strange hybrid of pure intergovernmentalism and the socialising logic of the coordination reflex. Furthermore, the role of COHOM (or CONUN elsewhere in the UN system) would be unclear, since it would not be able to resolve differences between all the co-authors (EU and non-EU), thereby placing

³⁵ 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.

more responsibility on the shoulders of New York staff. In short, 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 EU Presidency was far more 'in control' than it appears, both to other EU member states (through being the information gatekeeper) and externally through managing the defence of the resolution. The arguments articulated against the death penalty by the EU member states and the co-authors so convincingly were in part because the diplomats involved believed in them and were willing to stick their necks out within their regional groups to be heard. Ultimately they were articulating positions drawn up by the EU, which points to a mutual relationship between the EU and the co-authors, neither of whom could operate without the other.

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 one that 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 in campaigning against the death penalty. Amnesty is strongly abolitionist and highly concerned about the risk of failure, resulting in its '100 co-sponsors' threshold for action. While Amnesty is widely recognised as an advocacy group outside of 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 and once AI had decided to support the action, the decision remained within a small circle of staff so as to allow 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. On the one hand 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-indulges NGOs with a sense of importance in world politics that is misplaced. On the other hand, as we shall see below, Amnesty played an important advocacy role that cannot be disputed in its significance. What is interesting is the credibility of the Amnesty position – both in terms of the credibility that they might choose to abstain from campaigning for a resolution, and their perceived usefulness to the process to the point where they were indispensable. One way of explaining this outcome is to look at the positive contribution played by the NGO at every stage of the drafting and voting process.

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. Diplomats talked of the galvanising effect this had on all who attended, and gave the co-authors a renewed incentive to pass the resolution.³⁶ During the final Third Committee meetings the co-authors defended their resolution using the arguments refined by Amnesty over 35 years 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 even 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 through personal contact, emails and faxes to persuade these states to support the resolution. To this end, five more states voted in favour of the resolution in the UNGA than the Third Committee, which in part is attestable to Amnesty's work.

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 to 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 (if it violated one of their 'red lines'), 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.

³⁶ <http://www.amnesty.org/en/news-and-updates/feature-stories/stop-death-penalty-worldwide-abolition-now-20071031> (Accessed 12 April 2008)

6. Conclusion: A Model for Future EU 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, 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. This finding is both good and bad. On the positive side the fact that no one aspect can be singled out suggests that this can serve as a framework for new EU initiatives when a similar constellation emerges in the future. That no one aspect was crucial implies that there is a degree of flexibility between them, meaning a less-capable Presidency (or Council Secretariat post Lisbon Treaty) might be compensated for by more political capital from various member states. On the negative side, one is left with the conclusion that the EU cannot work alone and external factors are equally important as whatever the EU seeks to do by itself. For better or worse, a *constellation* is required to get results in the UN.

The case study teaches us four lessons about how the EU must coordinate in the UN in the future if it is to be successful. Firstly, the EU cannot operate in a vacuum in the UN. The distance between the initial common position decided in COHOM in Brussels and the resolution passed in New York shows that the EU must meet in the middle if it wants to be an effective multilateral actor, and it can only do this by listening to states that are sympathetic to its values, *as well as those that are not*. In the case of the latter, the co-authors defended their resolution through better arguments, not carrots, sticks, or normative power. Outreach is necessary and leadership is required. Secondly, the EU must realise that its 'brand' is not universally respected or appreciated in the UN. Co-authors were attacked for being puppets of the EU, and in order to prevent the EU brand damaging the goods (as well as possibly improving the brand image) the EU must be more transparent with its co-authors in the drafting process, as well as being willing to give over ownership of the document

to the group. Fear of 'loosing control' cannot be entertained if co-authors are to contribute as equals. In addition, 'loosing control' might be just what the EU needs to do if it is to operate in the paradigm of pragmatic consensus within the UN system. Thirdly, the 'many voices, one message' approach seemed to work in the Third Committee. The message was the defence of the resolution, and EU and non-EU states delivered a clear and solid message orchestrated by the Presidency with input from Amnesty International. Recalling the earlier points about the EU brand, having the Presidency speak too often in UN debates where arguments need to be articulated would appear counterproductive. Finally, and most importantly, the network of diplomats in New York cannot be overlooked. The EU needs to be inward and outward looking simultaneously and diplomatic networks beyond the EU are crucial. In this case the Portuguese Presidency reached out to the NGO community and brought them in when required. Diplomats also worked with non-EU co-authors and co-sponsors, as well as among themselves to moderate the reality on the ground in New York back to their national capitals and gain concessions where needed to move the process forward. The few blocks around First Avenue and 46th Street might be a microcosm of world politics to some, while to others they are an abstract world divorced from the global reality. Either way, the EU cannot plug into that world from Brussels; it must do so on the ground. To do that, EU diplomats must get in among them, even if it means diluting the EU identity because doing so will ultimately make the EU stronger.