

EXPERT OPINION ON

THE DETERRENT EFFECT OF THE DEATH PENALTY

A submission by Professor Carolyn Hoyle and Professor Ron Dudai

QUALIFICATIONS

1. I, Carolyn Hoyle, am Professor of Criminology and Director of the Death Penalty Research Unit in the Centre for Criminology, Faculty of Law at the University of Oxford. My academic research has included wide-ranging work on the death penalty incorporating both empirical and theoretical perspectives, with a particular focus on Africa and Asia. Along with many peer-reviewed journal articles and reports on the death penalty, I am the co-author of the book *The Death Penalty: A Worldwide Perspective* (5th edn., Oxford University Press 2015; 4th edn, Oxford University Press 2008), widely considered to be the most authoritative text on this topic.
2. I, Ron Dudai, am Associate Professor at the Department of Sociology and Anthropology, Ben Gurion University, and associate researcher at the Death Penalty Research Unit in the Centre for Criminology, Faculty of Law at the University of Oxford. I am the author of dozens of articles, chapters and reports, and my research was published in many leading law and social sciences journals.
3. We have been instructed by Adalah - The Legal Center for Arab Minority Rights in Israel to provide an expert opinion on the deterrent effect of the death penalty, including in relation to offences classified as terrorism. We are writing this opinion in our personal capacity, as experts in criminology, with particular expertise in research on the death penalty. We understand that our overriding duty is to the Court and to provide independent, objective and impartial evidence within our field of expertise.

ISSUES ADDRESSED

4. In this Expert Opinion, we provide analysis of the evidence concerning the international movement away from capital punishment; the effectiveness of the death penalty as a deterrent to offending, both in general and in relation to terrorism; and the inherent arbitrariness of mandatory death sentences.
5. Nothing in this report should be read as an attempt to minimise the horror of terrorist attacks against civilians. Those responsible must be held accountable and appropriately punished—but by means other than the death penalty.

THE INTERNATIONAL COMPARATIVE CONTEXT

6. Over the past decades, the number of countries that have abolished capital punishment has increased dramatically, from just 52 in 1988 to 124 countries by the end of 2025. Of those countries that retain the death penalty in law, only 15 carried out executions in 2024, and only 33 continued to impose death sentences and carry out executions over the past decade. Many other countries which have not formally abolished the death penalty, do not

regularly carry out executions: in 2025 there were 42 countries that the UN terms ‘abolitionist de facto’ or ADF, which means they had conducted no executions for at least 10 years. The last of the two executions carried out by the State of Israel was that of Adolf Eichmann, the architect of the Holocaust, in 1962.

7. According to Amnesty International, aside from China, the nations in which executions were most frequently carried out in 2024, the last year for which figures are available, were: Iran, Iraq, Yemen, Somalia and Saudi Arabia.¹
8. The death penalty has been abolished in every European state save Belarus, and abolition of the death penalty is a condition of membership in the Council of Europe, as well as in the European Union. In addition, Turkey has abolished the death penalty and Russia has maintained a moratorium on executions since 1996. There are no executions throughout the Americas with the exception of the USA, though even there a majority of states (37 out of 50) have abolished the death penalty in law or in practice. A handful of death sentences continue to be imposed in the Caribbean, particularly in Trinidad and Tobago where the death penalty is mandatory for murder, but here too there have been no executions for almost twenty years, much longer in some Caribbean countries.
9. The death penalty is rarely applied across Africa. Only Botswana, Egypt, Somalia, South Sudan and Sudan have carried out executions during the past ten years and in 2023, there were executions only in Egypt and Somalia. In 2024 even Zimbabwe, whose government has long been accused of abusing human rights, abolished the death penalty.
10. To sum, the international abolitionist movement has now been embraced by many states with different political systems, religious faiths and cultures, and only a small minority of countries continue to embrace the death penalty.
11. International law does not yet prohibit capital punishment, but it does significantly restrict it. Echoing the fifth of the Ten Commandments handed down to Moses on Mt Sinai, ‘thou shall not kill,’ Article 6 (2) of the International Covenant on Civil and Political Rights², of which Israel is a state party, declares that ‘every human being has an inherent right to life’. It goes on to restrict and specify how the death penalty might still be used, but also states: ‘Nothing in this Article shall be invoked to delay or prevent the abolition of capital punishment by any State Party to the present Covenant.’ In general, international law envisages a movement toward abolition, and, for example, prohibits a reintroduction of the death penalty where it has been abolished.
12. Hence, to apply the death penalty to those convicted of intentional killing where the act constitutes terrorism under Israeli law would put Israel out of step with international practice and with international law and norms in relation to evolving human rights standards. This concern is further compounded where such application is mandatory.

DETERRENCE AND THE DEATH PENALTY: A GENERAL VIEW

13. Israel’s new ‘Death Penalty for Terrorists Law’, 5786–2026’ justifies its use on the grounds it will act as a deterrent. Clause 1 of the Law’s Chapter A states that its purpose includes ‘enhancing deterrence’ and ‘preventing attacks intended to secure exchanges’.
14. In convincingly demonstrating the presence of a dynamic of deterrence, the key question is not whether some people may be deterred, but whether a system of capital punishment

¹ <https://www.amnesty.org/en/documents/act50/8976/2025/en/>

enforced through executions actually leads to lower rates of capital offences than a penal system which uses an alternative severe punishment, such as life imprisonment.

15. There is, however, a large body of evidence that suggests that the death penalty is an ineffective deterrent both in general, and with regard to specific types of crime. A large volume of econometric studies, conducted over a long period, primarily in the United States, have failed to demonstrate that the death penalty deters serious crime any more than a long prison sentence.
16. The belief that the death penalty has a unique deterrent effect informs the most common sentencing rationale for retention worldwide. Retentionists argue that if they know they risk being sentenced to death, would-be offenders desist from committing capital offences in more cases than they would if they were at risk only of life imprisonment. Economists have presented crime as the result of a choice, claiming that those who consider committing offences are rational actors who carefully weigh up the relative costs and benefits of their planned actions, and adapt their behaviour accordingly.² This often leads to an intuitive conclusion that given that the death penalty is uniquely severe, it will have unique deterrence effect.
17. However, and despite the rhetorical prominence of deterrence to justify the death penalty, there is a notable absence of credible empirical evidence to support it. To demonstrate deterrence, the question is not whether *some* people may be deterred, but whether capital punishment results in lower rates of capital crime.
18. There are methodological challenges to proving or disproving a relative deterrent effect. It is not possible to conduct experiments, for obvious ethical reasons, and so studies have generally relied upon common social scientific methods of analysis of trends and comparisons. First, the commission of capital crimes may be measured in a given jurisdiction before and after abolition or reintroduction of capital punishment, relying on a time-series analysis. Second, the rate of crime in two or more jurisdictions—similar except that at least one has abolished the death penalty—could be compared. Third, through the theory and techniques of econometric and other multivariate statistical analyses, research can calculate over time and/or across jurisdictions the association between the rate of executions and the rate of homicides, once other factors that may affect both the ‘supply’ of murders and the use of executions have been controlled for.³
19. Although murder rates are affected by factors beyond the criminal justice process, if the death penalty did deter, we would expect time series analysis to show that rates increased once the deterrent had been removed. There is no evidence this has ever happened, in any jurisdiction. For example, following abolition in the Czech Republic, Hungary, Moldova, Romania and Poland during the 1990s, homicide rates across all five countries *declined* by 61% between 2000 and 2008.⁴ There was also a clear reduction in homicide rates in Australia and Canada in the decades after abolition.⁵ A study of 12 mainly European countries which have abolished the death penalty at different times between 1905 and 1968 has compared homicide rates in the years before and after abolition of the death penalty

² Gary S. Becker, ‘Crime and Punishment: An Economic Approach,’ 76 *Journal of Political Economy* 169 (1968); Isaac Ehrlich, ‘Participation in Illegitimate Activities: A Theoretical and Empirical Investigation,’ 81 *Journal of Political Economy* 521 (1973).

³ Hans Zeisel, ‘The Deterrent Effects of the Death Penalty: Facts v Faith’ (1976) *Supreme Court Review* 317–343 at 332–332.

⁴ United Nations Office on Drugs and Crime (UNODC), *Global Study on Homicide 2011*, UNODC 2011, p66.

⁵ Hood and Hoyle, *Towards the Global Elimination of the Death Penalty*, p407; Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective* (Oxford University Press 2015), p399.

and found no evidence of deterrence effect.⁶ Among these examples is Israel, where the death penalty for murder was abolished in 1954, after which murder rates have significantly dropped in the immediate years after the abolition.⁷

20. Comparisons between otherwise similar jurisdictions which have abolished or retained the death penalty similarly fail to demonstrate that the death penalty reduces homicide rates. A sophisticated study compared murder rates between Singapore (which retains the death penalty) and Hong Kong (which does not), pointing out that they share several characteristics and socioeconomic trends beyond penal policy.⁸ Over a period of 30 years, homicide rates followed a similar path of decline, with no observed differences resulting from a spike in executions in Singapore in the mid-1990s, nor any rise in response to the abolition of the death penalty in Hong Kong in 1993.⁹ Similarly, murder rates in Canada have gone up and down in virtual lockstep with U.S. rates over the years, notwithstanding that Canada has had no executions since 1962. In fact, during the period just after the United States reinstated the death penalty in 1976, murder rates remained high in the United States while declining in Canada.¹⁰ Comparing states within the United States, a study found that between 1974 and 2009, 447 executions occurred in the state of Texas, 13 occurred in California and none occurred in New York, yet rates of homicide followed similar patterns of fluctuation throughout this period across all three states, clearly influenced by factors other than punishments.¹¹
21. The vast majority of studies examining whether the death penalty has a deterrent effect have been carried out in the U.S.¹² Ehrlich's time-series study from 1935 to 1969, which was published in 1975, maintained that the higher the rate of executions, the lower the homicide rate, calculating an average of seven to eight lives saved for each additional execution during this time.¹³ However, while some researchers using the same methodology drew similar conclusions,¹⁴ others failed to replicate the findings. Bowers and Pierce found that when the last five years of Ehrlich's time-series were excluded, during which there were very few executions and a sharply rising homicide rate, 'all empirical support for the deterrent effect of executions disappears',¹⁵ and most other researchers were unable to find a consistent relationship between sanctions and homicide.¹⁶

⁶ Archer, Dane, Rosemary Gartner, and Marc Beittel. "Homicide and the death penalty: A cross-national test of a deterrence hypothesis." *Journal of Criminal Law & Criminology* 74 (1983): 991.

⁷ *ibid*

⁸ Zimring F et al, Executions, Deterrence and Homicide: A Tale of Two Cities, *Journal of Empirical Legal Studies* 7(1) 2010, pp1-29.

⁹ *ibid* p27.

¹⁰ Donohue, J. J., & Wolfers, J. Uses and Abuses of Empirical Evidence in the Death Penalty Debate. *Stanford Law Review*, 58, 791.

¹¹ National Academy of Sciences, Deterrence and the Death Penalty (2012), 40.

¹² Hoyle C and Hood R, Deterrence and Public Opinion, in Office of the United Nations High Commission for Human Rights, *Moving Away from the Death Penalty: Arguments, Trends and Perspectives* (United Nations, 2015), pp68-83, p70.

¹³ Isaac Ehrlich, 'The Deterrent Effect of Capital Punishment: A Question of Life and Death' (1975) 65 *American Economic Review* 397-417. See also, Ehrlich, 'Deterrence: Evidence and Inference' (1975) 85 *Yale Law Journal* 209-227.

¹⁴ Kenneth Wolpin, 'Capital Punishment and Homicide in England: A Summary of Results' (1978) 68 *American Economic Review* 422-427 at 426.

¹⁵ W. L. Bowers and G. L. Pierce, 'The Illusion of Deterrence in Isaac Ehrlich's Research on Capital Punishment' (1975) 85 *Yale Law Journal* 187-208 at 197-198.

¹⁶ P. Passell, 'The Deterrent Effect of the Death Penalty: A Statistical Test' (1975) 28 *Stanford Law Review* 61-80 at 80; Theodore Black and Thomas Orsagh, 'New Evidence on the Efficacy of Sanctions as a Deterrent to Homicide' (1978) 58 *Social Science Quarterly* 616-630 at 629.

22. To overcome the limitations caused by the heterogeneity of variables across large geographical areas, later studies focused on smaller regions, but homicide rates were again seen to follow similar patterns of fluctuation, influenced by factors other than punishments.¹⁷ One of the most rigorous empirical studies was conducted in Texas by Fagan and his colleagues. In line with most other research, it found no deterrent effect.¹⁸
23. Taken together, the strength of this research lies ‘not in individual studies but on the work taken as a whole’,¹⁹ and as Donohue and Wolfers concluded, homicide rates in the United States appeared to be unrelated to capital punishment.²⁰
24. It should be noted that, nevertheless, some studies have claimed to have overcome some of the methodological objections to earlier work, and declared a ‘deterrent effect’ of executions.²¹ Dezhbakhsh, Rubin, and Shepherd claimed to have found a ‘substantial deterrent effect of both sentences to death and executions’, with a ‘conservative estimate... that each execution results in, on average, eighteen fewer murders’.²² Sunstein and Vermeule argued that *if* this study were correct, a case could be made for regarding capital punishment as ‘morally obligatory—above all from the standpoint of those who wish to protect life’.²³
25. However, a couple of years later, Sunstein joined with Justin Wolfers to report that ‘the best reading of the accumulated data is that they do not establish a deterrent effect of the death penalty’²⁴; and more recent research has undermined claims of deterrence effect, exposing flaws in their logic and the inferences drawn by their authors.²⁵ Replication studies have pointed out glaring methodological failings and produced opposite results: far from finding that each execution produced 18 fewer murders, as Dezhbakhsh et al claimed, reanalysis of the same data by Donahue and Walters concluded that ‘each execution is associated with 18 *more* murders!’, suggesting that the wide variation between studies was ‘outside the bounds of credibility’.²⁶ Reanalysis of the data from another econometric study concluded that statistical ‘pyrotechnics’ had led its authors to sacrifice plausibility on ‘the altar of sophistication’.²⁷ Hence, as Donohue and Wolfers stated, ‘the existing evidence for deterrence is surprisingly fragile . . . it is entirely unclear even whether the preponderance of evidence suggests that the death penalty causes more or less murder.’²⁸

¹⁷ Nagin D S and Pepper J V, Deterrence and the Death Penalty, *National Research Council* 2021, p40.

¹⁸ Jeffrey Fagan, Franklin Zimring, and Amanda Geller, ‘Capital Homicide and Capital Punishment: A Market Share Theory of Deterrence’ (2006) 84 *Texas Law Review* 1803–1868.

¹⁹ Richard Lempert, ‘Desert and Deterrence: An Assessment of the Moral Bases of the Case for Capital Punishment’ (1981) 79 *Michigan Law Review* 1177–1231 at 1205.

²⁰ Donohue and Wolfers, (n 30) 810.

²¹ H. Naci Mocan and R. Kaj Gittings, ‘Getting Off Death Row: Commuted Sentences and the Deterrent Effect of Capital Punishment’ (2003) 46 *Journal of Law and Economics* 453–478 at 456; 466.

²² H. Dezhbakhsh, *et al.*, ‘Does Capital Punishment have a Deterrent Effect? New Data from Postmoratorium Panel Data’ (2003) 5 *American Law and Economics Review* 344–376 at 369. See also J. M. Shepherd, ‘Deterrence versus Brutalization: Capital Punishment’s Differing Impacts among States’ (2005) 104 *Michigan Law Review* 203–255.

Zimmerman estimated that each execution deterred an average of fourteen murder: Paul R. Zimmerman, ‘Estimates of the Deterrent Effect of Alternative Execution methods in the United States: 1978–2000’ (2006) 65 *American Journal of Economics and Sociology* 909–941.

²³ C. R. Sunstein and A. Vermeule, ‘Is capital punishment morally required? Acts, omissions, and life-life tradeoffs’ (2006) 58 *Stanford Law Review* 703–750 at 705 and 750.

²⁴ See Cass R. Sunstein and Justin Wolfers, ‘A Death Penalty Puzzle’ *The Washington Post* June 30, 2008

²⁵ Donohue and Wolfers, ‘The Death Penalty: No Evidence for Deterrence’ (n 4) 5.

²⁶ Donohue and Wolfers, (n 4) 3.

²⁷ Donohue and Wolfers (n 117) 842.

²⁸ John J. Donohue III, ‘The impact of the death penalty on murder’ (2009) 8(4) *Criminology and Public Policy* 795-810 at 798; Tomislav V. Kovandzic, Lynne M. Vieraitis and Denise Paquette Boots, ‘Does the death penalty save lives? New evidence from State Panel Data, 1977 to 2006’ (2009) 8(4) *Criminology and Public Policy* 803-843 at 837.

26. Given the apparent risk of focusing on any one study that may not be sufficiently rigorous, we should look to authoritative reviews and meta-analyses of *many* empirical studies, including methodological critiques. A US National Academy review of dozens of pieces of research concluded that ‘the recent literature ... [is] inconclusive as a whole, and in many cases uninformative [on whether there is a deterrent effect of the death penalty]...’²⁹ Similarly, on time series methods, it concluded: ‘We do not believe that these approaches have provided *any* causal evidence on the deterrence question ... [They] suffer from fundamental limitations and ... simply do not rise to the level of credible evidence on deterrence as a behavioral mechanism.’³⁰ A meta-analysis of 700 deterrence studies, including 52 focusing on the death penalty, shows that while deterrent effects can be seen for minor offences, there is no deterrent effect on homicides for any punishment, including executions.³¹
27. A report issued in 2012 by the Committee on Deterrence and the Death Penalty of the US National Research Council reviewed the evidence since the Academy’s previous report in 1978 and came to the same conclusion: ‘Research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates. Therefore, the Committee recommends that these studies not be used to inform deliberations requiring judgements about the effect of the death penalty on homicide and ... should not influence policy judgements about capital punishment.’³²
28. Overall, then, there is no persuasive evidence that the death penalty deters murder in general. Before turning to its possible deterrence of terrorism, it is worth considering that it appears to be equally ineffective in deterring a type of crime where some might assume that rational choices and cost-benefit analyses *do* influence decisions to offend—large scale drug trafficking.
29. Following earlier studies in jurisdictions that use capital punishment in this way, such as Iran,³³ one of us, Professor Hoyle, together with colleagues, have recently completed a three-year study of the use of the death penalty in Indonesia, where there are more than 300 people currently living under sentence of death for this class of crime. Our conclusion, derived from sophisticated analysis of structured interviews with a large majority of those on death row and a further sample of 100 self-confessed drug traffickers in the community is that the death penalty has no deterrent impact.³⁴ This conclusion is borne out by data on drug seizures by law enforcement agencies, which have been steadily increasing for many years.
30. The question whether the death penalty affects rates of homicide has been one of the most studied questions in law and social sciences, examined by dozens of scholars, publishing in leading academic journals, over decades. The overall conclusion from this large body of

²⁹ Aaron Chalfin, Amelia M. Haviland and Steven Raphael, ‘What Do panel Studies tell Us About a Deterrent Effect of Capital Punishment? A Critique of the Literature’ (2013) 29 *Journal of Quantitative Criminology* 5-43 at 5 and 8.

³⁰ Kerwin Kofi Charles and Steven N. Durlauf, ‘Pitfalls in the Use of Time Series methods to Study Deterrence and capital Punishment’ (2013) 29 *Journal of Quantitative Criminology* 45-66 at 45-46 and 65.

³¹ Dieter Dolling, Horst Entorf, Dieter Hermann, and Thomas Rupp, ‘Is Deterrence Effective? Results of a Meta-Analysis of Punishment,’ 15 *European Journal of Crime Policy Research* 201 (2009).

³² Daniel S. Nagin and John V. Pepper (eds) *Deterrence and the Death Penalty* (Washington DC, The National Academies Press 2012) 3

³³ See, for example, Fattah, E. (1987/1988). The Use of the Death Penalty for Drug Offences and for Economic Crimes: A Discussion and Critique. *Revue Internationale de Droit Penal*, 58, 723–735 at p. 726.

³⁴ C. Hoyle & P. Jabbar (2026, in preparation) *Drugs and the Death Penalty in Southeast Asia: Failing to Deter*, Oxford University Press

research is that, using peer-reviewed academic research methods, and based on social science data, **no clear empirical demonstration of the effects of the death penalty on deterrence has emerged.** In the absence of credible evidence, the consensus among social scientists and legal scholars is firmly against the existence of a deterrent effect on murder rates when compared with the alternative of lengthy prison sentences. A survey of dozens of leading criminologists published in the *Journal of Criminal Law and Criminology* reported “overwhelming consensus among these criminologists that the empirical research conducted on the deterrence question strongly supports the conclusion that the death penalty does not add deterrent effects to those already achieved by long imprisonment”.³⁵ In short, whatever the popular intuition or lay belief is, the scientific community has been clear that no empirical research method, including time series, comparisons, and multivariate statistical analyses, has been able to demonstrate a deterrent effect of the death penalty.

31. Of course, many individuals oppose or support the death penalty based on moral, legal, political or religious grounds, irrespective of the question of deterrence. Yet given the inherent problem of violating the right to life, and the numerous risks and costs associated with the death penalty and executions, the absence of credible empirical evidence of clear deterrent effect is significant. In our expert opinion, the existing body of research does not substantiate the claim that the death penalty deters offending or saves future lives.

AN ABSENCE OF EVIDENCE THAT THE DEATH PENALTY DETERS TERROR CLASSIFIED OFFENCES

32. Most studies of the deterrent effect of the death penalty have focused on ‘ordinary’ homicide, not killings perpetrated in pursuit of ideological or political objectives, including offences defined in law as terrorism, let alone by members of organisations that revere what they term ‘martyrdom’, such as Hamas and Palestinian Islamic Jihad. This context changes the assessment: while, as was shown above, there is no evidence that the death penalty has a deterrent effect in relation to ordinary murder, in the case of terrorism the absence of a deterrent effect is even more pronounced.
33. This is because, first, those who carry out terrorist acts often are in any event ready to die for their causes and may even act under the presumption that they themselves will be killed, and are therefore unlikely to be deterred by the prospect of a death sentence; second, many such perpetrators may seek what they describe as ‘martyrdom’ and may be willing to accept a death penalty and indeed may seek it; and, third, some evidence suggests that in these contexts, executions, rather than having a general deterrent effect, may instead contribute to further mobilization of violence and recruitment to such groups.

Lack of deterrent effect

34. The notion that individuals involved in acts classified as terrorism conduct a rational, cost-benefit analysis before deciding to launch an attack and will be deterred by the possibility of a death sentence is plainly wrong. This is clearly illustrated by the prevalence of suicide bombings as well as ‘sacrifice attacks’ in which perpetrators do not expect to survive, as well as in cases where individuals involved in planning or facilitating such acts may anticipate a high likelihood of death, including by ‘targeted assassinations’, or capture.
35. People that carry out such attacks do not make rational decisions in weighing the pros and the cons of an attack – including the risk they run of being killed in action – especially

³⁵ Radelet, Michael L., and Traci L. Lacock. "Do Executions Lower Homicide Rates: The Views of Leading Criminologists!" *J. Crim. L. & Criminology* 99 (2008): 489.

those individuals who are convinced that dying for their cause will make them martyrs, thus limiting any potential deterrent effect.³⁶ The high fatality rates associated with such acts further suggests that the risk of execution is unlikely to significantly influence their decision to engage in murder, as many perpetrators may already anticipate or accept that they will not survive.

36. This position has also been reflected in statements by officials in Israel and elsewhere. For example, a GSS representative said in a Knesset discussion in 2018 that in relation to ‘terrorists’, ‘their working premise is that they will not come back alive, so there is no element of deterrence here’.³⁷ It is, in short, self-evident that those who perpetrate such attacks proceed on the expectation that they are unlikely to survive. In these circumstances, the conventional logic of deterrence does not apply, as individuals may be prepared or willing to die for their cause, and therefore are highly unlikely to worry about the possibility of being killed if they are captured.³⁸ Similar concerns have been expressed in policy debates and official statements in other jurisdictions.³⁹
37. Global research on the psychological factors which distinguish why some individuals become involved in terrorism, identify among other factors, that ‘They come to believe that they will achieve more in death than they ever could in life, a very powerful motivating factor not only in initial recruitment but also in terms of sustaining that person’s commitment to the movement once a member’.⁴⁰ This again underlines the futility of the death penalty as a deterrent. This has been echoed in the specific Palestinian case, by an Israeli psychologist who specializes in profiling terrorists, who had flatly rejected that the death penalty could deter them, and said ‘from knowing Palestinian society, I think this [the death penalty] will only cause more antagonism and more mobilization for action, and it does not serve us. On the contrary, it will make them greater shahids’.⁴¹
38. The premise that the death penalty does not deter terrorism has been a hallmark of the Israeli response to terrorism for decades, and has been consistently expressed by numerous decision makers and analysts, underpinning a constant policy of not imposing the death penalty in Israel’s military courts, notwithstanding the theoretical possibility of so doing.⁴²
39. As early as October 1967 Justice Minister Shapira flatly asserted that the death penalty does not deter terrorism.⁴³ Minister Yisrael Galili declared in 1972 that ‘the death penalty cannot deter these kinds of crimes against us, certainly not the type of suicide terrorists’.⁴⁴ General Shlomo Gazit, who was among the chief architects of Israel’s policy towards Palestinians

³⁶ Bibi van Ginkel, (The (In-)Effectiveness of "Deterrence" as an Instrument Against Jihadist Terrorist Threats, International Center for Counter Terrorism, 20 March 2015

³⁷ What is the prevalent security position regarding death penalty to terrorist? Globes, 3 January 2024

³⁸ Thomas M. McDonnell, The Death Penalty - An Obstacle to the ‘War Against Terrorism’?, 37 V AND. J. T RANSNAT’ L L. 353, 402-403 (2004).

³⁹ See, for example, statements by a former French Minister of Justice questioning the deterrent effect of capital punishment in such contexts, and a British assessment in relation to IRA-related violence expressing scepticism as to its deterrent value. Robert Badinter, The OSCE and the Death Penalty, The Death Penalty in the OSCE Area Background Paper 2006, OCTOBER 2006, p.8; Stacy Hynd, "More an Inspiration than a Deterrent? Capital Punishment and British Colonial Counter-Insurgency, c. 1916–1973." In *The Oxford Handbook of Late Colonial Insurgencies and Counter-Insurgencies*. Oxford University Press (OUP), 2023.

⁴⁰ Horgan, J. (2008). From profiles to pathways and roots to routes: Perspectives from psychology on radicalization into terrorism. *The ANNALS of the American Academy of Political and Social Science*, 618(1), 80-94, at p.85

⁴¹ Sagit Yehoshua, cited in Alad Samchiof, “Inside the head of the Terrorists”, N12, 29 November 2025.

⁴² Ron Dudai, "Restraint, reaction, and penal fantasies: Notes on the death penalty in Israel, 1967–2016." *Law & Social Inquiry* 43, no. 3 (2018): 862-888; Amy Ayalon and others, position paper – death penalty to terrorists bill, 25 November 2025;

⁴³ Eli Teicher, “Death Penalty does not deter”, Davar, 4 October 1967.

⁴⁴ Government meeting protocol, the trial of Kozo Akamoto, 16 July 1972

after 1967, explained the decision not to use the death penalty by saying that ‘the main consideration was efficiency in fighting terrorists, and from this perspective the assessment was that the damage of executions will be bigger than any gain’.⁴⁵ Haim Zadok, a leading jurist and former Minister of Justice, wrote: ‘I am not among those who oppose death penalty from principled-moral reasons. My test is “will death penalty help or harm the fight against terrorism?” My answer is clear: it will not be helpful, and may bring damage.’⁴⁶ In 1992 Haim Ramon, the Minister of Justice told the Knesset on behalf of the government that: ‘all security bodies...without any exceptions have advised not to impose death penalty’.⁴⁷ A military court of appeals found in 1995 that the death penalty will generate more harm than benefit in relation to Israeli security from attacks.⁴⁸ In 2015, the government’s Attorney General found that the death penalty does not deter terrorism, ‘given these are ideological offenders who at any case are willing to die during the operation.’⁴⁹ These are but some of many illustrations of the general point that the security and judicial systems have been consistently, and over decades, of the opinion that the death penalty will not deter terrorism. This position was based not on moral objections but on assessments of its inefficacy and the view that the death penalty could potentially be harmful to Israel’s own security.⁵⁰

The death penalty as a sought outcome for the executed

40. Not only does the death penalty fail as a deterrent, it may in fact serve as a perverse incentive for some terrorists, due to misguided attraction to what they perceive as self-sacrifice for the cause, and contributing to the construction of ‘martyrdom’.⁵¹ In such circumstances, the death penalty might then risk encouraging further violence by conferring such status.⁵²

41. Evidence from several jurisdictions suggests that many individuals involved in acts defined as ‘terrorism’ not only accept death but welcome a death sentence and execution and see it as a form of validation. For some, being executed is to be elevated to the status of true martyrs. This has been observed across different contexts and in relation to various ideologies. For example, Timothy McVeigh, the perpetrator of the Oklahoma City bombing in 1996, was convicted and sentenced to death, and executed in 2001 having decided to waive his rights both to appeal and to seek clemency.⁵³ This suggests that he had not been deterred by the prospect of a capital sentence.

42. Similar patterns have been noted in other cases. Individuals convicted in major attacks in Indonesia,⁵⁴ the United States,⁵⁵ and elsewhere⁵⁶ have, in many instances, expressed a willingness to accept or even welcome executions, including in terms associated with ‘martyrdom’. Such examples illustrate how the death penalty may acquire symbolic value rather than operate as a deterrent.

⁴⁵ Shlomo Gazit, *The Carrot and the Stick in the Occupied Territories*. Tel-Aviv: Dvir, 1985, p.298.

⁴⁶ Haim Zadok, “And What if the Death Penalty for Terrorists Would be Imposed? Yediot Achronot, June 14 1993.

⁴⁷ Haim Ramon, Knesset 23 December 1992.

⁴⁸ Said Badarne v. Military Prosecutor, Jenin Military Court, 282/94, February 23, 1995.

⁴⁹ Tova Tsimuky, “Weinstein on the Death penalty: ‘it does not Deter Terrorists’”, Yediot Achronot, 12 July 2015

⁵⁰ Ron Dudai, "Restraint, reaction, and penal fantasies: Notes on the death penalty in Israel, 1967–2016." *Law & Social Inquiry* 43, no. 3 (2018): 862-888.

⁵¹ Dolnik, Adam, and Rohan Gunaratna. "On the nature of religious terrorism." In *Routledge handbook of religion and politics*, pp. 355-362. Routledge, 2008., at p347

⁵² Thomas M. McDonnell, *The Death Penalty - An Obstacle to the ‘War Against Terrorism?’*, 37 V AND. J. T RANSNAT’ L. L. 353, 402-403 (2004)

⁵³ <https://www.nytimes.com/2000/12/13/us/mcveigh-ends-appeal-of-his-death-sentence.html>.

⁵⁴ Jane Perlez, *Court Decides to Sentence Bali Bomber to Death*, N.Y. TIMES, Aug. 8, 2003, at A8.

⁵⁵ Andrew O. Selsky, “Accused 9/11 Mastermind Asks Judge to be Executed,” Associated Press, June 5, 2008

⁵⁶ Lawrence Wright, *The Looming Tower*, (New York: Random House, 2011), 36-37;

43. Related concerns have also been reflected in legal⁵⁷ and policy discussions.⁵⁸ It has been noted that execution may, in certain contexts, confer symbolic significance and risk being perceived as a form of validation rather than punishment. Several former senior GSS officials have warned that in the Palestinian context those convicted with terror classified killings would equally view executions as a prize should it be applied against them.⁵⁹
44. In short, in the context of offences defined in law as terrorism and other forms of ideologically or politically motivated violence, , the death penalty may not only fail to deter but can be a perverse incentive and operate in a self-defeating manner. “For most people, death by execution would be a fate worth avoiding. But many terrorists view execution as a form of principle or martyrdom. For those who commit acts of terrorism motivated by religious beliefs, execution offers martyrdom and rewards in the afterlife.”⁶⁰

The death penalty as a counterproductive measure

45. In addition, the death penalty may in some cases be counterproductive. It may provide organizations with the opportunity to further mobilize members and supporters, gain publicity, and construct narratives of ‘martyrdom’ around executed individuals. Far from being a deterrent, executions serve as a rallying point, providing such organizations with reasons for reprisals and eliciting a spur in recruitment. Thus, executions of those convicted of ‘acts of terrorism’ could well inspire rather than deter further violence,⁶¹ making the death penalty not just ineffective but counterproductive.
46. This assertion has been echoed consistently across different jurisdictions and contexts. For example, a former French justice minister found that ‘Experience shows that, far from preventing or reducing terrorism, the death penalty simply makes it worse. ... By executing him, the justice system turns the terrorist into a hero who sacrificed his life for the cause he supported, if through extreme means. How many young people, inspired by his example, would lend their support to the very organizations the terrorist supported the day after his execution’.⁶² Similar concerns have been expressed in other contexts. In Northern Ireland, John Hume, a leading Nationalist politician and Nobel Prize Laureate, cautioned that the reintroduction of the death penalty would be welcomed by those involved in political violence.⁶³ In the United States, commentators and policy analysts have likewise noted that the use of capital punishment in such cases may risk conferring symbolic value on those executed and may contribute to mobilisation and further acts of violence rather than deterrence.

⁵⁷ David Bruck, in *The Catholic Lawyer* 41(3), 2001, p.194; Leonie Brinkema, Judge, Fed. District Ct. of E. Va., U.S. v Zacarias Moussaoui Hearing (May 4, 2006).

⁵⁸ Alan Dershowitz, “Dzhokhar Tsarnaev should not face the death penalty, even for a capital crime”, *The Guardian*, 24 April 2013; Terry Frieden, ‘Mukasey: Avoid death, martyrdom for 9/11 accused’, CNN website, 14 March 2008, accessed in English 18 September 2013 at <http://edition.cnn.com/2008/POLITICS/03/14/mukasey.911/>

⁵⁹ Nina Fuca, “deterrence or doubling attacks? Former senior GSS heads against death penalty to terrorists, YNET 4 March 2023

⁶⁰ Jeffrey Fagan *Deterrence and the Death Penalty in International Perspective*, in *Moving Away From The Death Penalty: Arguments, Trends and Perspectives*, 2015, p.95.

⁶¹ Jeffrey Fagan *Deterrence and the Death Penalty in International Perspective*, in *Moving Away From The Death Penalty: Arguments, Trends and Perspectives*, 2015, p.95.

⁶² Robert Badinter, *The OSCE and the Death Penalty*, *The Death Penalty in the OSCE Area Background Paper* 2006, OCTOBER 2006, p.8

⁶³ John Hume, speech in UK Parliament, 13 July 1983, at https://cain.ulster.ac.uk/john_hume/docs/Hume_1983-07-13_speech_HoC.pdf

Alan Dershowitz, in discussing Dzhokhar Tsarnaev, who planted a bomb in the Boston marathon, wrote that ‘Seeking the death penalty against Tsarnaev, and imposing it if he were to be convicted, would turn him into a martyr. His face would appear on recruiting posters for suicide bombers. The countdown toward his execution might well incite other acts of terrorism. Those seeking paradise through martyrdom would see him as a role model.’⁶⁴ Jessica Stern, who served on the USA National Security Council, found that ‘when it comes to terrorism, national security concerns should be paramount. The execution of terrorists... play right into the hands of our adversaries. We turn criminals into martyrs, invite retaliatory strikes and enhance the public relations and fund-raising strategies of our enemies’.⁶⁵

47. In the Irish case, which has been among the most studied cases in the academic literature on terrorism and political violence, there is a consensus that executions of Irish rebels after the Easter Rising have dramatically increased support for the rebels rather than deterring it:⁶⁶ ‘the executions helped to achieve what the rebellion itself did not – an intensification of nationalist feelings well beyond the rebels ranks...the executions produced sympathy for that rebel cause which they were supposed to undermine...the dead rebels became martyrs.’⁶⁷ Winston Churchill himself noted how the executions exacerbated hatred of England and strengthened the support for the rebels.⁶⁸
48. Similarly, the execution of Sayyid Qutb in Egypt, whose ideology has had a foundational influence on the global jihadist movement, had an effect contrary to that first intended and instead of eliminating the threat of Qutb’s revolutionary thought, the execution ‘gave his ideas a sacred frame and confirmed him as a martyr in the eyes of his followers’. His execution ‘led many people, in particular Islamist youth, to read his work with admiration and respect’, and indeed ‘a former Egyptian jihadist argued that if Qutb had not been executed, his book would not have had the same impact on him and his generation’.⁶⁹
49. Several Israeli politicians shared their own experience in the anti-British underground and described how executions by the British had mobilized them and their comrades, and warned that executions will always have such effects, whatever the ideology and practice of the group in question. Uri Avnery, a member of Etzel and later a member of Knesset, described how he volunteered to the Etzel a month after British Mandate authorities had executed an Etzel member, and how there was a direct link between the execution and his decision and the decision of his comrades to volunteer to the Etzel that year.⁷⁰ Natan Yellin-Mor, one of the leaders of Lehi, similarly said that the underground experience during the Mandate era should be a warning against applying the death penalty to Palestinians convicted of terrorism, given that executions ultimately strengthen the resolve and willingness to fight of underground groups and the support they receive from the wider population.⁷¹
50. Menachem Begin, commander of the Etzel, wrote that executions of Etzel members by the British only led to further intensification of the organization’s activities.⁷² Years later,

⁶⁴ Alan Dershowitz, “Dzhokhar Tsarnaev should not face the death penalty, even for a capital crime”, *The Guardian*, 24 April 2013

⁶⁵ Jessica Stern, *Execute Terrorists at Our Own Risk*, *New York Times*, 28 Feb 2001.

⁶⁶ Tim Pat Coogan, *The IRA*, Palgrave 2002, p. 88

⁶⁷ Richard English, *Armed Struggle: The History of the IRA*, p.5

⁶⁸ Winston Churchill, “The Irish Specter”, in *The World Crisis: The Aftermath*, p.281

⁶⁹ Georges Fahmi, *The enduring appeal of Sayyid Qutb’s jihadist ideology*, *Open Democracy* 26 July 2021

⁷⁰ Knesset plenary, 9 May 1979.

⁷¹ Natan Yellin-Mor, *Gallows enhance willingness to fight*, *Haaretz* 9 November 1969.

⁷² Begin, *The Revolt*, p.299

he reportedly told a British Minister that far from serving as a deterrent, the execution of Irgun fighters had galvanized the Etzel: ‘got us the recruits that we wanted, made us more efficient...you were not sentencing our terrorists to death, you were sentencing a lot of your own people’.⁷³ Indeed the failure of the executions to curb underground activity and the retaliatory violence triggered by the executions is widely thought to be a significant factor in convincing the British government to surrender the mandate.⁷⁴

51. To sum, the concern that those executed will be perceived as ‘martyrs’, role models and objects of imitation has been one of the common arguments against using the death penalty in the context of terrorism, and indeed a common and consistent argument underpinning the policy of not applying the death penalty in Israel.⁷⁵

Global decline of death penalty for terrorism

52. Given all of the above, it is not surprising that many states have decided to refrain from using the death penalty in relation to terrorism, based on the premise that far from contributing to security it could in fact be counter-productive and dangerous.
53. In some jurisdictions, historically the death penalty was abolished for ‘ordinary’ murders but retained for crimes that threatened the state, such as terrorism, especially during political conflict and in wartime. However, since the end of the 1980s, almost all countries that have embraced abolition have accepted the view that no such distinction is justified: and that the death penalty is not to be used even in relation to grave offences such as terrorism or crimes against humanity.⁷⁶ By 2025, only seven otherwise abolitionist countries retained the death penalty for use in exceptional circumstances, such as military offences or crimes against the state including treason or terrorism (Brazil, Burkino Faso, Chile, El Salvador, Guatemala, Israel and Peru). This likely reflects growing recognition of the penalty’s ineffectiveness and counter-productivity in relation to such offences.
54. Northern Ireland is a case in point. In 1973, the British government decided to end the possibility of imposing the death penalty for terrorism in the jurisdiction. This was done, significantly, at the very height of violence (in 1972, 500 people were killed in the jurisdiction, adjusted to population size equivalent to more than 3,000 in contemporary Israel), and as part of the Special Powers Act which otherwise restricted civil rights, for example the introduction of nonjury ‘Diplock courts’ for terrorism suspects. The decision was based on national security considerations, with officials accepting that capital punishment did not work as an effective deterrent for premeditated, politically motivated offences, particularly where individuals were already facing the threat of death at the hands of security forces and were prepared to risk their own lives. The death penalty was thus assessed as not as a deterrent but as a new inspiration for the IRA, which will use the propaganda value of executions.⁷⁷ It was widely acknowledged that executions would prove to be a ‘colossal blunder’ and engender instantaneous support and sympathy for those

⁷³ Don Concannon, Commons Chamber, Volume 970: debated on Thursday 19 July 1979

⁷⁴ Stacey Hynd, ‘More an Inspiration than a Deterrent?’ Capital Punishment and British Colonial Counter-Insurgency, c. 1916–1973. In *The Oxford Handbook of Late Colonial Insurgencies and Counter-Insurgencies*. Oxford University Press 2023; John Newsinger, *British Counterinsurgency: From Palestine to Northern Ireland*, 2nd edn. (Basingstoke: Palgrave Macmillan, 2015), pp. 30, 21

Haim Zadok, ‘And What if the Death Penalty for Terrorists Would be Imposed?’ Yediot Ahronot, June 14 1993;⁷⁵ Nina Fucs, ‘deterrence or doubling attacks? Former senior GSS heads against death penalty to terrorists’, YNET 4 March 2023; Amy Ayalon and others, position paper – death penalty to terrorists bill, 25 November 2025

⁷⁶ R. Hood & C. Hoyle (2017) ‘Towards the Global Elimination of the Death Penalty: A Cruel, Inhuman and Degrading Punishment’, in P. Carlen and L. Ayres Franca, eds. *Alternative Criminologies*, Routledge.

⁷⁷ Stacey Hynd, ‘More an Inspiration than a Deterrent?’ Capital Punishment and British Colonial Counter-Insurgency, c. 1916–1973. In *The Oxford Handbook of Late Colonial Insurgencies and Counter-Insurgencies*. Oxford University Press 2023

executed and their ‘contemporaneous cause’.⁷⁸ In the following decades there were repeated calls to reinstate the death penalty for terrorists, and at times a wide majority of the British public supported the death penalty for convicted terrorists,⁷⁹ but national security considerations were instrumental in maintaining abolition, notwithstanding very serious threats from IRA attacks (which included among many others an attack on government leaders in 1984 in which a cabinet minister was killed and then prime-minister Thatcher was almost killed, and a mortar attack on a cabinet meeting at 10 Downing Street in 1991).⁸⁰

55. Where the death penalty has been recently applied to those convicted of terrorist crimes it appears to be motivated primarily by a perceived need for revenge, not deterrence. For example, in 2015 Pakistan broke an eight-year moratorium on executions following the Taliban massacre of children in Peshawar in December 2014. (This was initially said to be directed only at members of the Pakistan Taliban who had been convicted of terrorist offences, but according to the Human Rights Commission of Pakistan, 334 executions took place in 2015, at least 300 of which had been for murder not falling under the anti-terrorism legislation.)⁸¹
56. In other jurisdictions, the death penalty has been used after a long hiatus as an emphatic reassertion of state power: for example, in Myanmar, where in 2022, a year after a military coup, the authorities executed four political opponents, the first executions there since 1989. Capital punishment has been widely used for the same purpose in Iran, Saudi Arabia, Yemen or Iraq. In none of these cases was any evidence presented to suggest that executions had any effect on deterring terrorism. In Iraq, for example, the UN High Commissioner for Human Rights found that ‘In our view, the claim that using the death penalty can help deter terrorism is clearly exposed as a fallacy, given the soaring casualty rate in Iraq, which has occurred over roughly the same period as the dramatic and shocking increase in the use of the death penalty’.⁸²
57. Moreover, the experience of retaining the death penalty for terrorism has shown that it suffers from all the faults inherent in its use for ‘ordinary crimes’, being prone to arbitrary, discriminatory and inappropriate application, and likely to lead to wrongful convictions.⁸³
58. At the same time, other countries have confronted periods of considerable conflict and atrocious crimes while abolishing capital punishment. They include among others Rwanda following the genocide of 1994; Cambodia following the demise of the Pol Pot regime; and South Africa after the end of apartheid. When international law has responded to such events, it has done so without recourse to this ultimate penalty. The UN Security Council excluded capital punishment from the International Criminal Tribunals to deal with atrocities in the former Yugoslavia in 1993 and Rwanda in 1994, and later in Sierra Leone and Lebanon. Nor is it available in the International Criminal Court as a sanction for genocide, other grave crimes against humanity or war crimes.⁸⁴ The fact that it is not

⁷⁸ Doyle, David Matthew. "Republicans, martyrology, and the death penalty in Britain and Ireland, 1939–1990." *Journal of British Studies* 54, no. 3 (2015): 703-722, at p. 721

⁷⁹ Laura O'Reilly, "The Birmingham pub bombings, the Irish as a "suspect community" and the memories of the O'Reilly family," in *The Northern Ireland Troubles in Britain: Impacts, Engagements, Legacies, and Memories*, ed. Graham Dawson, Jo Dover, and Stephen Hopkins (Manchester: Manchester University Press, 2017), 287.

⁸⁰ Doyle Doyle, David Matthew. "Republicans, martyrology, and the death penalty in Britain and Ireland, 1939–1990." *Journal of British Studies* 54, no. 3 (2015): 703-722

⁸¹ Hood and Hoyle, *ibid.*

⁸² UN High Commissioner for Human Rights, Press briefing notes on Iraq / Death penalty, 11 October 0213

⁸³ Hood and Hoyle, *ibid.*

⁸⁴ Hood and Hoyle, *ibid.*

applied for such atrocious crimes, should be a further indication that it should not apply for acts defined as terrorism.

CONCLUSION

59. There is a global trend toward the abolition of the death penalty and progressive development of international law that contributes to recognition of the impermissibility of capital punishment.⁸⁵
60. As stated at the outset, nothing in this opinion is intended to diminish the gravity of attacks against civilians, including the atrocious massacre of October 7, the harm caused by such attacks, and the need for accountability. However, as the evidence demonstrates and as is well established, the death penalty, as in the Death Penalty Law recently adopted by the Knesset, does not operate as a deterrent to such offences.

Professor Carolyn Hoyle, M.A., MSc., DPhil (Oxon)
Director, Death Penalty Research Unit,
Faculty of Law, University of Oxford, England



Professor Ron Dudai
Ben Gurion University of the Negev



30 March 2026

⁸⁵ Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, Report of the United Nations Secretary General, E/2025/75, 2 June 2025, para. 159.