

# NOTE

## Drugs, Death, and Deterrence: A Critical Discussion of Singapore’s Use of the Death Penalty in Drug Trafficking Cases

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## Introduction

Over the course of the past half century, the topic of the death penalty has been hotly contested.<sup>1</sup> The late 1980s marked the beginning of a movement against the imposition of mandatory capital punishment sentences.<sup>2</sup> Various governing bodies, tribunals, protocols, and conventions have since established that the death penalty is no longer a legitimate punishment against any crime.<sup>3</sup> Despite this, the death penalty has not been established as illegal under international law.<sup>4</sup>

As of 2020, 55 countries were categorized as “retentionist,” marking their divergence from the international consensus against the use of capital punishment.<sup>5</sup> Among these countries is Singapore, a small island-nation found off the coast of Malaysia.<sup>6</sup> Despite Singapore’s reputation for efficient public transport, high standards of living, and vast amounts of foreign investment, it is also known for imposing disproportionately harsh punishments for crimes committed within its borders.<sup>7</sup> Described in the 1990s as the “world execution capital,” Singapore has fiercely defended its use of long-dropped hanging as punishment for a variety of crimes including drug trafficking.<sup>8</sup>

The Misuse of Drugs Act, Singapore’s drug control law, creates a presumption of trafficking for threshold amounts of different drugs.<sup>9</sup> Section 17 provides that:

[a]ny person who is prov--ed to have had in his or her possession more than (1) 100 grammes of opium; (b) 3 grammes of morphine; (c) 2 grammes of diamorphine; (d) 15 grammes of cannabis; (e) 30 grammes of cannabis mixture; (f) 10 grammes of cannabis resin; (g) 3 grammes of cocaine; (h) 25 grammes of methamphetamine; (ha) 113 grammes of ketamine; or (i) 10 grammes of any or any combination of the following: (i) N,  $\alpha$ -dimethyl-3,4-(methylenedioxy)phenethylamine; (ii)  $\alpha$ -methyl-3,4 (methylenedioxy)phenethylamine; (iii) N-ethyl- $\alpha$ -methyl-3,4-(methylenedioxy)phenethylamine, whether or not contained in any

1. See Ariel Yap & Shih Joo Tan, *Capital Punishment in Singapore: A Critical Analysis of State Justifications from 2004 to 2018*, 9 INT’L J. FOR CRIME, JUST., AND SOC. DEMOCRACY 133, 134 (2020).

2. *Id.*

3. See *id.*

4. *Id.*

5. *Abolitionist and Retentionist Countries*, DEATH PENALTY INFORMATION CENTER, <https://deathpenaltyinfo.org/policy-issues/international/abolitionist-and-retentionist-countries> [<https://perma.cc/9Q4M-EFVH>] (last visited Oct. 12, 2022).

6. *Id.*

7. See *BRIA 101b Singapore: Model Society or City of Fear?*, CONSTITUTIONAL RIGHTS FOUNDATION, <https://www.crf-usa.org/bill-of-rights-in-action/bria-10-1-b-singapore-model-society-or-city-of-fear> [<https://perma.cc/MF9F-J3A2>] (last visited Oct. 12, 2022).

8. See Yap, *supra* note 1, at 134.

9. See Misuse of Drugs Act 1973, part 3, § 17 (Sing.) (“Presumption concerning trafficking”).

substance, extract, preparation or mixture, is presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his or her possession of that drug was not for that purpose.<sup>10</sup>

Under the Second Schedule, “Offenses Punishable on Conviction,” the Misuse of Drugs Act sets the mandatory minimum and maximum punishments for drug trafficking.<sup>11</sup> The most common minimum punishment for drug trafficking is 20 years in prison and 15 strokes of the cane.<sup>12</sup> For certain quantities of those drugs, however, there is only one punishment: death.<sup>13</sup>

In 2012, Singapore amended the Misuse of Drugs Act to add § 33B, providing courts with the discretion to replace the default death penalty for drug trafficking with life imprisonment and caning, provided the accused can prove certain factors.<sup>14</sup> In the years following the addition of § 33B, as well as the year immediately prior to its addition, the Singaporean government imposed a moratorium on drug-related executions.<sup>15</sup> That moratorium was short-lived: Tan Hai Lang and Foong Chee Peng were executed for the crime of drug trafficking on July 18, 2014, only a few years later.<sup>16</sup>

A decade after § 33B was enacted to stymie the imposition of the death penalty, Singapore continues to execute those convicted of drug-related offenses. By July of 2022, five people in Singapore were hanged in a period of less than four months.<sup>17</sup> Each of the executed was sentenced to the mandatory death penalty for drug-related offenses.<sup>18</sup> One of the executed was Nagaenthran K. Dharmalingam, a 34-year-old Malaysian citizen arrested in 2009 for trafficking 42.7 grammes of heroin into Singapore.<sup>19</sup> The Singaporean government faced international scrutiny for proceeding with the execution, as medical experts who assessed Nagaenthran in 2013, 2016, and 2017 found that he had “borderline functioning intelligence and concurrent cognitive defects,” as well as an IQ of 69.<sup>20</sup> Nagaenthran was executed on April 25, 2022, despite said

10. *Id.*

11. See Misuse of Drugs Act 1973, sch. Second (Sing.).

12. See, e.g., *id.* at (4)(a),

13. See, e.g., *id.* at (5)(b) (stating that the punishment for unauthorized traffic of cocaine in the quantity of more than 30 grammes being death).

14. See *id.* at 33B; Siyuan Chen, *The Discretionary Death Penalty for Drug Couriers in Singapore: Four Challenges*, 20 INT’L J. OF EVIDENCE AND PROOF 49, 50 (2016).

15. Chen, *supra* note 14, at 50; Emerlynnne Gil, *Serious Setback: Singapore Breaks Moratorium on Death Penalty*, INTERNATIONAL COMMISSION OF JURISTS (Jul. 18, 2014), <https://www.icj.org/serious-setback-singapore-breaks-moratorium-on-death-penalty/> [<https://perma.cc/YV2M-Y8L4>] (noting that the moratorium on drug-related executions was imposed in 2011).

16. 1, *supra* note 15.

17. Amnesty International, *Singapore: Fifth Execution in under Four Months Carried Out* (Jul. 22, 2022), <https://www.amnesty.org/en/latest/news/2022/07/singapore-execution-nazeri-bin-lajim/> [<https://perma.cc/LA9M-BUH9>].

18. *Id.*

19. Rhea Mogul & Helen Regan, *Singapore Executes Intellectually Disabled Man for Drug Trafficking after Rejecting Appeal*, CNN (Apr. 27, 2022), <https://www.cnn.com/2022/04/27/asia/singapore-nagaenthran-dharmalingam-execution-intl-hnk/index.html> [<https://perma.cc/8A65-J5AF>].

20. *Id.*; *Singapore: Abhorrent Hangings Must End as Man with Intellectual Disability Executed*, AMNESTY INTERNATIONAL (Apr. 27, 2022) [hereinafter *Singapore: Abhorrent Hangings*], <https://www.amnesty.org/en/latest/news/2022/04/singapore-abhorrent-hangings-must-end-as-man-with-intellectual-disability-executed/#:~:text=He%20was%20executed%20after%20he,of%20international%20law%20and%20standards> [<https://perma.cc/QM9B-DCQC>].

international scrutiny, resulting in vocal outrage among activists and citizens worldwide:<sup>21</sup>

Nagaenthran's hanging highlights the deep flaws of the death penalty in Singapore and the horror of its continued use. He was executed after he was sentenced to the mandatory death penalty for drug trafficking, amid concerns about his mental health state and despite having a diagnosed intellectual disability – in violation of international law and standards . . . Singapore's government is pursuing a cruel path that is severely at odds with the global trend towards abolition of the death penalty.<sup>22</sup>

Unprecedented protests erupted in Malaysia and Singapore days before and after Nagaenthran's execution, with hundreds of demonstrators gathering for a vigil in Hong Lim Park, Singapore's only space for public protest.<sup>23</sup>

Nagaenthran's execution reignited discourse surrounding Singapore's use of the death penalty.<sup>24</sup> However, the criticism Singapore faced has not prevented more hangings from occurring. In early 2023, Singapore's use of the death penalty for drug trafficking made international news. On April 26, 2023, Singapore executed 46-year-old Tangaraju Suppiah for trafficking 2.2 pounds of cannabis.<sup>25</sup> Although Tangaraju was not caught with cannabis, prosecutors argued that his phone was used to communicate with men who were attempting to smuggle cannabis into Singapore, holding him as the person responsible for coordinating the delivery of the drugs.<sup>26</sup>

The European Union's office in Singapore and a UN human rights office called for clemency and urged Singapore to commute Tangaraju's death sentence to a non-capital penalty,<sup>27</sup> stating “[i]mposing the death penalty for drug offenses is incompatible with international norms . . . the death penalty may only [be] impose[d] for the ‘most serious crimes,’ which is interpreted as crimes of extreme gravity involving intentional killing.”<sup>28</sup> Despite calls for Singapore to comply with international standards, Singapore heavily justifies its use of the death penalty through the principle of deterrence.<sup>29</sup>

Given this debate is once again making headlines, it's critical to re-examine Singapore's use of the death penalty in drug trafficking cases. This note

21. Mogul, *supra* note 19.

22. *Singapore: Abhorrent Hangings*, *supra* note 20 (quoting Erwin van der Borgh, Asia-Pacific Regional Director, Amnesty International).

23. *Id.*

24. See, e.g., *id.*

25. The Associated Press, *Singapore Executes Man for Coordinating the Delivery of Cannabis*, NPR (Apr. 26, 2023) [hereinafter *Singapore Executes Man*], <https://www.npr.org/2023/04/26/1172112509/singapore-executes-man-delivery-of-cannabis> [<https://perma.cc/Y7YP-QAJV>]; see also Dario Sabaghi, *Singapore Executes Man Over Cannabis Trafficking Amid International Criticism*, FORBES (Apr. 26, 2023), <https://www.forbes.com/sites/dariosabaghi/2023/04/26/singapore-executes-man-over-cannabis-trafficking-amid-international-criticism/?sh=158ba2fc6c20> [<https://perma.cc/LES4-3FF2>].

26. *Singapore Executes Man*, *supra* note 25.

27. Sabaghi, *supra* note 25.

28. UN Human Rights (@UNHumanRights), TWITTER (Apr. 25, 2023, 6:08 AM), <https://twitter.com/UNHumanRights/status/1650803905998082048?s=20> [<https://perma.cc/7QAQ-DCPZ>].

29. See generally *infra*, “State Justifications for Capital Punishment,” starting on pp. 108.

critically examines the island-nation's justifications for its use of the death penalty in the context of international legal frameworks. Specifically, Part I of this note identifies the legal framework of Singapore's drug laws, states justifications for the use of the death penalty in drug trafficking cases, and provides recent execution trends in the wake of § 33B. Part II identifies the key frameworks under international law that condemn Singapore's use of the death penalty. Part III discusses the extent to which the death penalty is an effective deterrent for drug-related offenses. Part IV explores the punishments imposed by different countries and governing bodies in drug-related cases. Finally, Part V argues that the Singaporean government can reduce drug usage and trafficking within its borders without the use of the death penalty by adopting effective methods employed by other nations.

## I. Background: Singapore's Use of the Death Penalty for Drug Traffickers

### A. The Development of Singapore's Death Penalty Laws for Drug Trafficking

#### 1. *Mandatory Death Penalty*

Singapore historically implemented a mandatory death penalty for trafficking specified quantities of drugs.<sup>30</sup> In the late 1960s and early 1970s, Singapore cited to a drug problem that "assumed alarming proportions."<sup>31</sup> To resolve this issue, the Misuse of Drugs Act ("MDA") was introduced to consolidate the Dangerous Drugs Act 1955 and the Drugs (Prevention of Misuse) Act 1969.<sup>32</sup> Originally, the MDA did not provide for the death penalty.<sup>33</sup> Less than three years later the MDA was amended to include the death penalty.<sup>34</sup> The mandatory death penalty was therefore enforced for drug trafficking between 1975 and 2012.<sup>35</sup>

Section 33 and the Second Schedule of the MDA prescribe punishments for offenses.<sup>36</sup> The first column of the Schedule specifies "[s]ection creating offence," the second column specifies the "[g]eneral nature of the offence," and the rest of the columns specify the "[p]unishment."<sup>37</sup> To determine the correct punishment for an offence, "[o]ne looks across the Schedule for the specific offence and the type and quantity of the drug involved under the second column, and finally the punishment prescribed under columns three to seven."<sup>38</sup> The fourth column provides for punishment for "[s]pecified drug or quantity thereof or drug with specified content involved."<sup>39</sup> To illustrate, the unauthorized traffic in a controlled drug except as otherwise provided in the

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30. See Tsun Hang Tey, *Death Penalty Singapore Style: Clinical and Carefree*, 39 COMMON L. WORLD REV. 315, 316 (Dec. 1, 2014).

31. *Nguyen Tuong Van v. Public Prosecutor*, CA 5/2004, at 44 (Oct. 20, 2004).

32. *Id.*; See also Misuse of Drugs Act 1973, part 3, § 17.

33. *Nguyen*, CA 5/2004, at 44.

34. *Id.*

35. See Chen, *supra* note 14, at 49.

36. See Misuse of Drugs Act 1973, part 1, § 3; Misuse of Drugs Act 1973, sch. Second.

37. See Misuse of Drugs Act 1973, sch. Second.

38. *Nguyen*, CA 5/2004, at 45. See also Misuse of Drugs Act 1973, sch. Second.

39. See Misuse of Drugs Act 1973, sch. Second.

Second Schedule is punishable by a range from minimum two years in prison and two strokes of the cane, to a maximum of twenty years in prison and fifteen strokes of the cane.<sup>40</sup>

When reading the fourth column of the Second Schedule, it becomes apparent that the punishment for varying quantities of many drugs is one word: death.<sup>41</sup> For example, the punishment for “[u]nauthorized traffic in opium where the quantity is more than 1,200 grammes and containing more than 30 grammes of morphine” is death.<sup>42</sup> Although this quantity may seem high to some, the death penalty is recommended for much lower quantities. In particular, the death penalty is cited as the punishment for the unauthorized traffic of cocaine in a quantity of more than thirty grammes.<sup>43</sup> Additionally, as discussed previously, the death penalty has been imposed for the mere conspiracy to traffic 2.2 pounds of marijuana.<sup>44</sup>

Trafficking into Singapore is not the only action subject to the death penalty. In fact, the unauthorized manufacture of morphine, diamorphine, cocaine, and methamphetamine, as well as any salt or salt of ester byproducts, are punishable by death.<sup>45</sup> Moreover, the export of controlled drugs is also subject to the death penalty.<sup>46</sup>

The mandatory death penalty was repeatedly challenged by Singaporean lawyers, however, the Singapore judiciary repeatedly sanctioned its constitutionality.<sup>47</sup> For example, arguments were made that the death penalty violated Article 12(1) of the Singapore Constitution.<sup>48</sup> Article 12(1) guarantees equality before the law for all persons.<sup>49</sup> The Privy Council endorsed the mandatory death penalty because its interpretation of Article 12(1) only prohibited laws “which require that some individuals within a single class should not be treated by way of punishment more harshly than others,” and there was nothing that forbade “discrimination in punitive treatment between one class of individuals, and another class, in relation to which there is some difference in the circumstances of the offence that has been committed.”<sup>50</sup> In the landmark decision of *Nguyen Tuong Van v. Public Prosecutor*, the Singapore Court of Appeal reinforced these ideals in stating that the Misuse of Drugs Act (MDA) was “sufficiently discriminating to obviate any inhumanity in its operation.”<sup>51</sup>

40. *Id.* § 5(1).

41. *See generally id.*

42. *Id.* § 5(2)(b).

43. *Id.* § 5(5)(b).

44. *See Singapore Executes Man*, *supra* note 25.

45. Misuse of Drugs Act 1973, §§ 6(2)-(5).

46. *See, e.g., id.* § 7(4)(b).

47. *See Tey*, *supra* note 30, 316-17; *See infra*, “Discretionary Death Penalty,” starting at pp. 107 (discussing the fact that the mandatory death penalty is discretionary where the convicted can prove their actions were restricted to that of a courier or the prosecutor certifies that the convicted assisted the Central Narcotic Bureau in disrupting trafficking activity).

48. *Tey*, *supra* note 30, at 317 (quoting *Yong Vui Kong v. Public Prosecutor* [2010] SGCA 20 ¶ 122).

49. *See S.G. CONST.* art. 12(1).

50. *See id.* *See also Tey*, *supra* note 30, at 317 (quoting *Yong Vui Kong v. Public Prosecutor* [2010] SGCA 20 ¶ 122).

51. *Nguyen*, CA 5/2004, at 87. *See also Tey*, *supra* note 30, at 317 (quoting *Yong Vui Kong v. Public Prosecutor* [2010] SGCA 20 ¶ 122).

## 2. Discretionary Death Penalty

In 2012, Singapore amended the Misuse of Drugs Act to include § 33B, which provides courts with the discretion to replace the mandatory death penalty with life imprisonment and caning, provided the accused or prosecution can show certain criteria.<sup>52</sup> Under § 33B, courts hearing capital drug trafficking cases may alternatively sentence a convicted trafficker to life imprisonment and fifteen strokes of the cane if two conditions are satisfied: (1) the convicted proves, on a balance of probabilities, that his involvement in the offence was restricted to that of a courier; and (2) the prosecutor agrees to certify to the court that the convicted substantively assisted the Central Narcotics Bureau (CNB) in disrupting trafficking activities within or outside Singapore.<sup>53</sup> The CNB's decision may only be challenged on the grounds of bad faith or malice.<sup>54</sup> In challenging the CNB's decision, the convicted bears the burden of proof.<sup>55</sup> This amendment supposedly reflects a “calibrated distinction between the different levels of accountability” of different operatives within drug syndicates, as well as to “temper and mitigate harsh laws with compassion.”<sup>56</sup>

### B. State Justifications for the Death Penalty

Despite the implementation of § 33B and the perceived relaxation of Singapore's death penalty laws, the nation maintains a staunch retentionist attitude toward the death penalty.<sup>57</sup> The death penalty system is the cornerstone of Singapore's zero-tolerance, tough on crime, and strong anti-drugs penal regime.<sup>58</sup> Arguing that the retention and application of the death penalty is rational, the government justifies its stance on the basis that the death penalty is part of its broader “tough law and order system” that effectuates the nation as a drug-free zone.<sup>59</sup>

The Singaporean government first justifies its need to retain the death penalty on communitarian ideals.<sup>60</sup> Singaporeans are “encouraged to place the nation before community and society above self and uphold shared values.”<sup>61</sup> Therefore, the notion of defending citizens through the sacrifice of the lives of guilty offenders permeates the Singaporean government's justifications for

52. Chen, *supra* note 14, at 49.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. See Yap, *supra* note 1, at 134.

58. *Id.* at 136.

59. *Id.*

60. *Id.* at 138. See also Transcript of Statement by Minister for Foreign Affairs and Minister for Law K Shanmugam at the High-Level Side Event at the 69th Session of the United Nations General Assembly “Moving Away from the Death Penalty: National Leadership,” 25 September 2014, MINISTRY OF FOREIGN AFFAIRS (Sep. 25, 2014), <https://www.mfa.gov.sg/Newsroom/Press-Statements-Transcripts-and-Photos/2014/09/Transcript-of-Statement-by-Minister-for-Foreign-Affairs-and-Minister-for-Law-K-Shanmugam-at-the-High> [<https://perma.cc/TK29-327M>] [hereinafter *Transcript of Statement by Minister for Foreign Affairs*] (“We see a lot of focus on people who face the death penalty but you don't see enough focus on their victims.”).

61. Yap, *supra* note 1, at 138.

the death penalty.<sup>62</sup> Indeed, the rights of those who face execution are subordinated by the rights of citizens to live in a safe, secure, and drug free environment.<sup>63</sup> Therefore, the government prioritizes the “collective good” over individual human rights.<sup>64</sup>

The Singaporean government also legitimizes its use of the death penalty through the concept of deterrence.<sup>65</sup> The government argues that the death penalty deters what they consider the most serious crimes; seriousness is judged in terms of their impact on the immediate and third-party victims, as well as society at large.<sup>66</sup> Specifically, the government considers drug trafficking as one of the most serious of crimes.<sup>67</sup> The government believes that the strength of their deterrence from drug trafficking stems from the act of the punishment itself, saying “people are very, very cautious and trafficking in Singapore becomes very risky business.”<sup>68</sup>

Finally, the Singaporean government further defends its use of the death penalty through a victim-centric approach.<sup>69</sup> State officials draw on the government’s capacity to keep Singapore relatively free from drugs, stating “[o]ne of the main reasons that our society is probably one of the safest in the world is that we take a very tough approach on drugs.”<sup>70</sup> Such statements generate a perception that Singapore’s safety and security are dependent on the death penalty, “without which there would be an increased risk of an uncontrolled” drug problem.<sup>71</sup>

## C. Comparing Legal Standards for Drug Trafficking

### 1. European Legal Standards for Drug Trafficking

Given that drug use has had a significant effect on public health across Europe, the European Union (EU) established the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) to catalog data on drug use in EU member states.<sup>72</sup> Accordingly, there is plenty of information available to the public regarding the effects of different policies on curbing illicit drug use.<sup>73</sup>

Portugal decriminalized all drugs effective in 2001 and is a large focus of much research of this unorthodox method of curbing illicit drug use.<sup>74</sup>

62. *Id.* at 139

63. *Id.* at 140.

64. *Id.*

65. *Id.* at 138. *See also* The Death Penalty in Singapore, MINISTRY OF HOME AFFAIRS (last accessed Nov. 05, 2021), <https://www.mha.gov.sg/home-team-real-deal/detail/detail/the-death-penalty-in-singapore> [<https://perma.cc/M6DJ-HR74>].

66. Yap, *supra* note 1, at 138.

67. *Id.*

68. *Id.*

69. *Id.* at 140. *See also* Transcript of Statement by Minister for Foreign Affairs, *supra* note 60.

70. *Id.*; *see also* Yap, *supra* note 1, at 140-41.

71. Yap, *supra* note 1, at 141.

72. Steve Anderson, *European Drug Policy: The Cases of Portugal, Germany, and the Netherlands*, 1 EIU POL. SCI. REV. 1, 3 (2012), <https://thekeep.eiu.edu/eiupsr/voll/iss1/2>, [<https://perma.cc/ZTY4-8E25>].

73. *See id.*

74. *Id.* at pp. 3-4.



Under the 2001 reforms, the use and possession of all illegal drugs – including cannabis, heroin, and cocaine – are legal but restricted to use or possession of up to ten days' worth of a drug.<sup>75</sup> Individuals charged with more than 0.1g heroin, 0.1g ecstasy, 0.1g amphetamines, 0.2g cocaine, or 2.5g of cannabis will be charged and referred to the courts, where they may face charges for trafficking or consumption.<sup>76</sup> Consequently, the trafficking of drugs is still illegal under Decree-Law no. 15/93 (hereinafter 15/93).<sup>77</sup> Under Article 21 of 15/93, the maximum penalty for trafficking is 15 years subject to a quarter increase if aggravating factors are present—such as the sale to minors or intellectually disabled individuals.<sup>78</sup>

Portugal, located on the south-western border of Europe, is a prime location for drug trafficking.<sup>79</sup> Consequently, it acts as a transit nation for cocaine trafficking from Brazil and Mexico, heroin from Spain, and hashish from Morocco.<sup>80</sup> However, since the 2001 reforms, most cases have involved only the use, acquisition, or possession of cannabis or heroin.<sup>81</sup> Moreover, the proportion of those cases involving heroin decreased from 33 percent in 2001 to 14 percent in 2006.<sup>82</sup> Admittedly, the proportion involving cannabis increased from 53 percent in 2001 to 70 percent in 2006.<sup>83</sup> However, that statistic reflects a broader increased trend of marijuana use, rather than Portugal's decriminalization laws.<sup>84</sup> Notably, post-reform declines in youths reporting use of cannabis in the last 30 days occurred despite this increase, reflecting that this use may be predominantly short-term or experimental.<sup>85</sup> Additionally, this short-term and experimental use subsided in the years following reform.<sup>86</sup>

One noted argument in favor of Portugal's relaxed drug laws was that it could enable police to shift resources away from low-level drug users to the larger problem of the Portuguese drug market.<sup>87</sup> Although it was originally suggested that police were wary that decriminalization would reduce their ability to disrupt the drug market, Portuguese police have managed to successfully target drug traffickers through novel methods.<sup>88</sup> Portuguese police enhanced their international collaborative efforts and introduced a more systematic use

75. Caitlin E. Hughes & Alex Stevens, *What Can We Learn From the Portuguese Decriminalization of Illicit Drugs?*, 50 BRIT. J. CRIM. 999, 1002 (2010) [Hereinafter *What Can We Learn*].

76. See *id.* (noting that in practice the described amounts are what individuals will be charged under).

77. See generally Decreto-Lei n.º 15/93 de 2 de janeiro [Decree-Law no. 15/93 of January 2], <https://diariodarepublica.pt/dr/detalhe/decreto-lei/15-1993-585178> [<https://perma.cc/2VGZ-9PCC>] (Port.).

78. See *id.* at art. 21.

79. *What Can We Learn*, *supra* note 75, at 1001.

80. *Id.*

81. *Id.* at 1004.

82. *Id.*

83. *Id.*

84. *Id.* See also Caitlin E. Hughes & Alex Stevens, *A resounding success or a disastrous failure: Re-examining the interpretation of evidence on the Portuguese decriminalisation of illicit drugs*, 31 DRUG AND ALCOHOL REV. 101, 103-04 (2012) [Hereinafter *A Resounding Success*].

85. *A Resounding Success*, *supra* note 84, at 103-04.

86. *Id.* at 103.

87. *What Can We Learn*, *supra* note 75, at 1011.

88. *Id.*

of investigative techniques.<sup>89</sup> In particular, Portugal has increased the capacity of their operational response with regard to drug trafficking by sea.<sup>90</sup> As a result, between 1995-99 and 2000-04, the amount of drugs seized destined for external markets increased by 499 percent.<sup>91</sup> Specifically, seizures increased by 116 percent for cocaine, 134 percent for hashish, 219 percent for heroin, and 1,526 percent for ecstasy.<sup>92</sup> Additionally, the prices of drugs in Portugal have decreased after 2001, suggesting less demand for illicit drugs within the nation.<sup>93</sup>

Comparatively, Portugal's neighbor Spain has mostly experienced stable drug prices.<sup>94</sup> Experts within Spain have attributed the lack of change in drug prices to greater-than-estimated levels of cocaine supply and increased demand for cocaine.<sup>95</sup> This data arguably indicates that the Portuguese drug market has not experienced a rampant increase in its drug market post-decriminalization, unlike neighboring countries seeing unaffected or increased demand for drugs within their borders.<sup>96</sup>

Germany also employs a similar approach to Portugal, in that the focus has shifted from treating drug use as a criminal issue to a public health issue.<sup>97</sup> For example, the German Federal Cabinet adopted the National Strategy on Drug and Addiction Policy as an ongoing strategy aimed to help individuals avoid or reduce their consumption of illicit substances via prevention, counselling and treatment, harm reduction, and supply reduction.<sup>98</sup> Although the unauthorized personal possession and purchase of drugs is a criminal offence punishable by up to five years in prison, German law affords various possibilities other than prosecution when small quantities of drugs are involved.<sup>99</sup> Occasionally, for these small quantities, the principle of "treatment instead of punishment" will allow for postponement or remission of punishment if the offender enters treatment.<sup>100</sup> However, the act of trafficking is punishable by an elevated penalty of two to fifteen years for significant quantities.<sup>101</sup>

The Netherlands, although famous for its status as an ideal location for "drug tourism" due to Amsterdam's tolerance of marijuana, also focuses heavily on the act of trafficking.<sup>102</sup> Schiphol International Airport in Amsterdam

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89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 1013 (noting that the reductions may point to increased supply and reduced demand, but that the data suggests it was due to reduced demand).

94. *Id.*

95. *Id.*

96. *See id.*

97. Anderson, *supra* note 72, at 4-5.

98. *Germany Country Drug Report 2019*, European Monitoring Centre for Drugs and Drug Addiction, at 2 (2019), [https://www.emcdda.europa.eu/publications/country-drug-reports/2019/germany\\_en](https://www.emcdda.europa.eu/publications/country-drug-reports/2019/germany_en) [<https://perma.cc/5K8W-3LA5>].

99. *Id.*

100. *Id.*

101. *Penalties for drug law offences in Europe at a glance*, European Monitoring Centre for Drugs and Drug Addiction, [https://www.emcdda.europa.eu/publications/topic-overviews/content/drug-law-penalties-at-a-glance\\_en](https://www.emcdda.europa.eu/publications/topic-overviews/content/drug-law-penalties-at-a-glance_en) [<https://perma.cc/DY5T-8QP4>].

102. Anderson, *supra* note 72, at 5.

was a primary point of entry for cocaine trafficking into Europe.<sup>103</sup> The flow of cocaine into Europe through Schiphol reached crisis proportions, with 4.3 tons of cocaine being seized in 2001.<sup>104</sup> The “100% Control” policy was therefore implemented, where flights landing in Schiphol from the Dutch Caribbean, Suriname, or Venezuela were extensively searched.<sup>105</sup> Rather than focusing on the threat of incarceration, the 100% Control policy focused on increasing the rate of interdiction to the point that trafficking becomes unprofitable.<sup>106</sup> This method focused on the drugs, rather than the couriers, and centered around incapacitation rather than deterrence.<sup>107</sup> Europol described the policy as follows:

Crews, passengers, their luggage, the cargo and the planes are systematically searched. Couriers with amounts of less than 3 kg of cocaine are not detained, unless they are arrested for the second time or another criminal offense is involved. Instead, the drugs are confiscated and the smugglers are sent back. Couriers who have been identified are registered on a blacklist, which is provided to KLM, Dutch Caribbean Airlines and Suriname Airways.<sup>108</sup>

The Dutch authorities even offer a receipt for drugs taken so that the couriers can explain the loss to their employers.<sup>109</sup> The 100% Control strategy was remarkably successful, with 6,147 couriers identified and 7.5 tons of cocaine seized between January 2004 and April 2006.<sup>110</sup>

## II. Singapore Has Achieved Maximum Deterrence, and Therefore Should Cease Use of the Death Penalty

### A. Human Rights & International Law

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that every human being has the inherent right to life.<sup>111</sup> Article 6 dictates that, in countries which have not abolished the death penalty, the death penalty may only be imposed for the most serious crimes in accordance with the law in force at the time of the commission of the crime.<sup>112</sup> However, although Article 6 permits the use of the death penalty, it also provides that, “nothing in this article shall be invoked to delay or prevent the abolition of capital punishment.”<sup>113</sup>

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103. International Drug Policy Consortium, *Case study: drug trafficking and the Netherlands Antilles*, at 4 (Feb. 28, 2007), <https://idpc.net/publications/2007/02/drug-trafficking-netherlands-antilles> [<https://perma.cc/9LRF-F3AX>].

104. *Id.*

105. *Id.* at 5.

106. *Id.*

107. *Id.*

108. *Id.* (quoting Europol).

109. *Id.* at 6.

110. *Id.*

111. International Covenant on Civil and Political Rights art. 6, Dec. 19, 1966, 999 U.N.T.S. 171.

112. *Id.* at 6(2).

113. *Id.* at 6(6).

Starting in the early 1980s, the United Nations has developed a stronger attitude towards the abolition of the death penalty. In 1984, safeguards guaranteeing protection of the rights of those facing the death penalty were promulgated by the United Nations Economic and Social Council.<sup>114</sup> In those safeguards, the UN noted that capital punishment may only be imposed for “the most serious crimes,” and the scope should not go beyond intentional crimes with lethal or “other extremely grave consequences.”<sup>115</sup> Those convicted of such crimes who are pregnant, who are below eighteen years of age at the time of the commission of the crime, or have become insane should not be sentenced to death.<sup>116</sup> Further, in 1991, a second optional protocol to the ICCPR (the Second Protocol) was promulgated by the General Assembly with the aim of abolishing the death penalty.<sup>117</sup> In a further series of resolutions adopted in 2007, 2008, 2010, 2012, 2014, 2016, and 2018, the General Assembly urged States to respect international standards that protect the rights of those facing the death penalty, to progressively restrict its use, and reduce the number of offences which are punishable by death.<sup>118</sup>

### 1. *The “Most Serious Crimes” Standard: Does Drug Trafficking Fall Within its Purview?*

The term “most serious crimes” is not defined under the ICCPR. However, ICCPR General Comment no. 6 on the right to life, established in 1982, stated that the “most serious crimes” standard must be read restrictively to mean that the death penalty is an exceptional measure.<sup>119</sup> However, that description is still broad and the author denoted that it was open to interpretation.<sup>120</sup> In 1984, the Economic and Social Council published the *Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty* (the Safeguards).<sup>121</sup> This publication stipulated that the most serious crimes should not go beyond

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114. See Economic and Social Council resolution 1984/50, *Safeguards guaranteeing protection of the rights of those facing the death penalty* (May 25, 1984) [hereinafter *Resolution 1984/50*], <https://www.ohchr.org/en/instruments-mechanisms/instruments/safeguards-guaranteeing-protection-rights-those-facing-death> [https://perma.cc/SQ4P-SM5E].

115. *Id.* at 1.

116. *Id.* at 2.

117. See, generally, General Assembly resolution 44/128, *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty* (Dec. 15, 1989).

118. *Death Penalty: The International Framework*, UNITED NATIONS HUM. RTS. OFFICE OF THE HIGH COMM’R (last visited Nov. 17, 2022), <https://www.ohchr.org/en/topic/death-penalty/international-framework> [https://perma.cc/F268-SCV8].

119. Devita K. Putri, *Interpreting ‘Most Serious Crimes’ Under Article 6(2) of ICCPR*, 31 MIMBAR HUKUM 419, 421 (Jan. 2020), [https://www.researchgate.net/publication/338899636\\_Interpreting\\_‘Most\\_Serious\\_Crimes’\\_under\\_Article\\_62\\_of\\_ICCPR](https://www.researchgate.net/publication/338899636_Interpreting_‘Most_Serious_Crimes’_under_Article_62_of_ICCPR) [https://perma.cc/7TZF-8LJG].

120. *Id.*

121. Int’l Bar Ass’n, *The Death Penalty under International Law: A Background Paper to the IBAHRI Resolution on the Abolition of the death penalty*, IBANET.ORG, at 5 (2008), <https://www.ibanet.org/medias/Deathpenalty-Paper.pdf?context=bWFzdGVyfEhSSS1yZXBvcnRzfDE1NjM3NnxhcHBsaWNhdGlvbI9wZGZ8aDYzL2hmMy84ODAwNjgzNDkxMzU4L0RlYXRocGVuYWx0eV9QYXBlci5wZGZ8NGEzOWJiMTI1YzZk5YWU0YjjiZmM5ZGU1MzY4OWMwNzNiNjNmMTFOTIyOGE2OGNkZmQ5NmU2MWFmZGYxNWQzMWw&attachment=true> [https://perma.cc/8L49-GSGB].

intentional crimes with lethal or “other extremely grave consequences.”<sup>122</sup> The term “intentional,” is defined within the Safeguards as acting with premeditation; it is understood as deliberate intent to kill.<sup>123</sup> Although not legally binding, the UN General Assembly endorsed the Safeguards, indicating strong international support.<sup>124</sup> Finally, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated that the death penalty should be abolished for drug-related offenses.<sup>125</sup>

It is therefore clearly accepted that drug crimes do not officially fall within the purview of the understanding of “most serious crimes.” However, the HRC only went so far as to say that the term must be strict in that the death penalty is an exceptional measure, and agreed with the Safeguards that it should be limited to intentional killings, and other extremely grave consequences resulting in deaths.<sup>126</sup>

## 2. *International Condemnation of the Death Penalty*

Currently, the UN states that the use of the death penalty is not consistent with the right to life and the right to live free from torture or cruel, inhuman, or degrading treatment or punishment.<sup>127</sup> The UN further states that the “death penalty is still employed . . . largely because of the myth that it deters crime.”<sup>128</sup> Specifically, the UN identifies states that permit the use of the death penalty “for crimes *other* than those of extreme gravity . . . including for drug-related crimes,” stating that “more work needs to be done.”<sup>129</sup> Accordingly, the UN Human Rights Office advocates for the abolition of the death penalty based on, among other things, the absence of proof that the death penalty deters crime.<sup>130</sup>

In a joint statement issued on October 10, 2022, in connection with the observance of the 20<sup>th</sup> World Day Against the Death Penalty, Dr. Alice Edwards, the U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions called death-penalty abolition the “only viable path.”<sup>131</sup> The Special Rapporteur again criticized the death penalty, noting that the imposition of the death penalty for non-violent crimes such as drug offenses fails the “most serious crime” standard for the application of capital punishment under international law.<sup>132</sup> Moreover, the Special Rapporteur called upon countries that

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122. *Id.* See also Resolution 1984/50, *supra* note 114.

123. Putri, *supra* note 119, at 421.

124. Int’l Bar Ass’n, *supra* note 121, at 5.

125. *Id.*

126. Putri, *supra* note 119, at 424.

127. *Death Penalty*, UNITED NATIONS HUM. RTS. OFFICE OF THE HIGH COMM’R (last visited Nov. 17, 2022), <https://www.ohchr.org/en/topic/death-penalty> [<https://perma.cc/F5CP-SGAN>].

128. *Id.*

129. *Id.*

130. *Id.*

131. U.N. Experts: ‘Almost Impossible’ for Countries to Administer Death Penalty without Violating Defendants’ Human Rights, DEATH PENALTY INFO. CTR. (Oct. 21, 2022), <https://deathpenaltyinfo.org/news/u-n-experts-almost-impossible-for-countries-to-administer-death-penalty-without-violating-defendants-human-rights> [<https://perma.cc/CD6D-EF4M>].

132. *Id.*

retain the death penalty to “scrupulously apply exceptions for persons with intellectual disabilities.”<sup>133</sup>

Various non-governmental organizations are also outspoken against the death penalty. Amnesty International holds that the death penalty breaches human rights, in particular the right to life and the right to live free from torture or cruel, inhuman, or degrading treatment or punishment as protected under the Universal Declaration of Human Rights.<sup>134</sup> This reasoning is in line with that of the United Nations.<sup>135</sup>

### 3. *Singapore Should Abolish the Death Penalty to Align Itself with International Legal Perspectives*

However, this analysis is moot. Singapore has not signed on to the ICCPR, nor has it signed onto the Universal Declaration of Human Rights.<sup>136</sup> Accordingly, even if the ICCPR provided that drug crimes were not some of the “most serious crimes,” such a standard would not be binding. Significantly, even if an argument for customary international law were valid, the Singaporean government has explicitly asserted that it imposes capital punishment for only the most serious crimes, which is the standard created by the ICCPR.<sup>137</sup> Admittedly, it is rational to argue that a multi-millionaire drug kingpin orchestrating mass shipments of fentanyl into Singapore with the intent to get the country hooked on the drug has committed “the most serious of crimes,” given general knowledge of the highly addictive nature and high mortality rate associated with the drug. The more drugs that are trafficked, the greater the likelihood of harm may be. Indeed, the Singapore Privy Council noted that singling out drug traffickers who possess a non-insubstantial amount of a drug is rational.<sup>138</sup> However, how can Singapore justify applying the same punishment to Tangaraju, the recently executed man who had only conspired to traffic 2.2 pounds of drugs that never made it into the country?<sup>139</sup>

Although Singapore has not signed on to the ICCPR, or the Universal Declaration on Human Rights, it should nevertheless seek to align its actions with the growing sentiment of the international legal community to shift away from the use of the death penalty. First, the United Nations has urged that member states shift away from the use of the death penalty for nearly forty

133. *Id.*

134. *About the Death Penalty*, AMNESTY INT’L (last visited Nov. 17, 2022), <https://www.amnesty.org/en/what-we-do/death-penalty/#:~:text=Amnesty%20International%20holds%20that%20the,by%20the%20UN%20in%201948> [https://perma.cc/M4TA-85PX].

135. *Death Penalty*, UNITED NATIONS HUM. RTS. OFFICE OF THE HIGH COMM’R (last visited Nov. 17, 2022), <https://www.ohchr.org/en/topic/death-penalty> [https://perma.cc/F5CP-SGAN].

136. *See Ratification Status for Singapore*, UN Treaty Body Database, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=157&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=157&Lang=EN) [https://perma.cc/3FWY-DPKX] (last visited Nov. 20, 2022).

137. Michael Hor, *The Death Penalty in Singapore and International Law*, 8 SINGAPORE YEAR BOOK OF INT’L L. & CONTRIBUTORS 105, 106 (2004); *see also* Ministry of Home Affairs, Press Release, “Singapore—The Death Penalty: A Hidden Toll of Executions” (Jan. 30, 2004).

138. Hor, *supra* note 137, at 111.

139. *See supra* note 25 and accompanying text.

years.<sup>140</sup> As a member of the United Nations,<sup>141</sup> Singapore is aware of the UN's position that the death penalty breaches the right to live free from torture or cruel, inhuman, or degrading punishment.<sup>142</sup> Policy wise, Singapore's failure to commit to ICCPR is not a sufficient reason to willfully ignore human rights standards it knows its fellow UN members assign themselves to.

## B. The Death Penalty is Not an Effective Deterrent

### 1. *Perspectives on the Death Penalty's Capability to Deter*

Deterrence is one of the most common rationales for the imposition of the death penalty.<sup>143</sup> The theory is that the threat of execution is sufficient to cause a significant number of people to refrain from committing a crime they had otherwise planned.<sup>144</sup>

In October of 2022, Singapore's Ministry of Home Affairs (MHA) published three studies on the use of the death penalty in Singapore, to better understand the views of Singapore residents and the perceptions of residents in regional cities.<sup>145</sup> The MHA found that there is strong support among Singapore's citizens and Permanent Residents for Singapore's use of the death penalty as punishment for "the most serious crimes, such as intentional murder, use of firearms, and trafficking a significant amount of drugs."<sup>146</sup> The studies found that most Singaporean citizens and Permanent Residents agreed that the death penalty is effective in deterring serious crimes.<sup>147</sup> Specifically, 78.9% of respondents in 2020 believed that the death penalty deters people from trafficking substantial amounts of drugs into Singapore, and 70.8% believed that the death penalty is more effective than life imprisonment in doing so.<sup>148</sup> In 2021, 73.7% of respondents agreed or strongly agreed that the death penalty is more effective than life imprisonment in deterring people from trafficking significant amount of drugs in Singapore.<sup>149</sup>

140. See Transcript of Statement by Minister for Foreign Affairs, *supra* note 60.

141. United Nations (UN), Ministry of Foreign Affairs Singapore, <https://www.mfa.gov.sg/SINGAPORES-FOREIGN-POLICY/International-Organisations/UN#:~:text=Singapore%20joined%20the%20UN%20on,halfof%20the%20UN%20membership> [<https://perma.cc/TT4M-LC49>].

142. *Death Penalty*, UNITED NATIONS HUM. RTS. OFFICE OF THE HIGH COMM'R (last visited Nov. 17, 2022), <https://www.ohchr.org/en/topic/death-penalty> [<https://perma.cc/F5CP-SGAN>].

143. *Deterrence: Studies show no link between the presence or absence of the death penalty and murder rates*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/policy-issues/deterrence> [<https://perma.cc/WR7P-6SQJ>] (last visited Nov. 20, 2022).

144. *Id.*

145. *Findings from Recent Studies on the Death Penalty in Singapore*, MINISTRY OF HOME AFFAIRS ¶ 1 (Oct. 19, 2022) [hereinafter *Findings from Recent Studies on the Death Penalty in Singapore*], <https://www.mha.gov.sg/mediaroom/press-releases/findings-from-recent-studies-on-the-death-penalty-in-singapore#:~:text=6.,for%20serious%20crimes%20in%20general> [<https://perma.cc/YF4G-8ZM2>].

146. *Id.* ¶ 3.

147. *Id.* ¶ 6.

148. *Id.* ¶ 6(a)(ii)(1) and (2).

149. *Id.* ¶ 6(c).

Singapore's public opinion on the death penalty's ability to deter contrasts widely from that of other nations.<sup>150</sup> In fact, only thirty-two percent of Americans surveyed in 2011 felt that the death penalty acted as a deterrent to murder, with sixty-four percent believing it does not lower the murder rate.<sup>151</sup> In a 1986 Gallup Poll, Americans were asked if they would support the death penalty if, "new evidence proved the death penalty does not act as a deterrent to murder."<sup>152</sup> Under the assumption that the death penalty had no deterrent effect, support for the death penalty dropped from seventy to fifty-one percent.<sup>153</sup>

It therefore seems as though the American public opinion and support for the death penalty is highly responsive to the punishment's ability to deter. Although this data is unavailable for Singaporean residents, it raises the question of whether Singaporean citizens feel similarly. As discussed previously, the Singaporean government has repeatedly emphasized to its citizens that the death penalty is a profound deterrent against drug trafficking.<sup>154</sup> However, it may be the case that Singaporeans support the death penalty due to their belief that it will deter drug traffickers. In fact, opinions on the efficacy of the death penalty's ability to deter drug trafficking may not necessarily reflect its actual effectiveness. Accordingly, it is important to examine whether the death penalty deters crimes in general, as well as drug related crimes.

## 2. *The Death Penalty & Deterrence: In General*

Despite Singapore's widespread belief that the death penalty deters crime, there is insufficient proof that the death penalty is an effective deterrent. In the mid-1970s, economist Isaac Ehrlich reported that each execution between 1933 and 1969 had prevented eight homicides, an astounding deterrent effect.<sup>155</sup> Ehrlich's research garnered much attention and support, despite scholars criticizing his work for its shortcomings.<sup>156</sup> However, in a study that ranged from the mid 1990s to the late 1990s, criminologists were found twice as likely as the general population to believe that the death penalty does not lower the murder rate.<sup>157</sup> Eighty percent of experts in criminology, based on the literature and research in criminology, believed that the death penalty does not have significant deterrent effects.<sup>158</sup>

To settle such debates, the ability of the death penalty to deter violent crime has been researched extensively. In 1988, a survey of worldwide research findings on the relation between the death penalty and homicide rates

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150. See *Death Penalty*, Gallup (last visited Nov. 18, 2022), <https://news.gallup.com/poll/1606/death-penalty.aspx> [<https://perma.cc/7BDU-EFVF>] (tracking the opinions of Americans surveyed about the death penalty starting in 1937 and ending in October of 2022) [*Hereinafter Gallup Poll*]. C.f. *Findings from Recent Studies on the Death Penalty in Singapore*, *supra* note 145, ¶ 3-6.

151. See Gallup Poll, *supra* note 150 ("Do you feel that the death penalty acts as a deterrent to the commitment of murder, that it lowers the murder rate, or not?").

152. Michael L. Radley & Ronald L. Akers, *Deterrence and the Death Penalty: The Views of the Experts*, 87 J. CRIM. L. & CRIMINOLOGY 1, 4 (1996).

153. *Id.*

154. See e.g. Transcript of Statement by Minister for Foreign Affairs, *supra* note 60.

155. See Radley, *supra* note 152, at 3.

156. *Id.* at 3.

157. *Id.* at 7.

158. *Id.* at 8.



conducted for the UN found that it had, “failed to provide scientific proof that executions have a greater effect than life imprisonment,” that such proof was unlikely to be forthcoming, and that the evidence gives no support to the hypothesis of the death penalty’s ability to deter.<sup>159</sup> In 2004, a study found that the average murder rate for states that employed the death penalty was 5.71 per 100,000 of the population against 4.02 per 100,000 in states that did not use it.<sup>160</sup> Moreover, in 2003, a separate study found that the murder rate in Canada had fallen by forty-four percent after abolishing the death penalty since 1975, when capital punishment was still enforced.<sup>161</sup> The result in Canada’s study is still the trend in the modern day: nations that abolish the death penalty tend to see their murder rates decline.<sup>162</sup> More recently, in a 2018 report by the Abdorrahman Boroumand Center, a Washington D.C. based organization that promotes human rights and democracy in Iran, ten out of eleven countries studied experienced a decline in murder rates in the decade following the abolition of the death penalty.<sup>163</sup>

These results are not isolated to countries, either. The Death Penalty Information Center analyzed data from 1987 through 2015 and found no evidence that the death penalty deters murders or protects police.<sup>164</sup> Instead, the evidence illustrated that murder rates are consistently higher in death-penalty states than in states that have abolished the death penalty.<sup>165</sup> In fact, death penalty states had a murder rate that was 1.39 times higher than non-death penalty states.<sup>166</sup> “There’s no evidence that the death penalty deters murder . . . murder rates may be affected by many things, but the death penalty doesn’t appear to be one of them . . . the death penalty doesn’t drive murder rates; murder rates drive the death penalty.”<sup>167</sup>

### 3. *The Death Penalty & Deterrence: Drug Related Crimes*

Despite the death penalty’s weak propensity to deter violent crime, it is also important to analyze the efficacy of the death penalty in drug-related cases. The rationale for using the death penalty in cases of drug trafficking is that it

159. *The Death Penalty: No solution to illicit drugs*, AMNESTY INT’L 9 (Oct. 1995), <https://www.amnesty.org/en/documents/act51/002/1995/en/> [<https://perma.cc/DCZ3-92UU>].

160. *Does the Death Penalty Deter Crime? Getting the Facts Straight*, AMNESTY INT’L 1, <https://www.amnesty.org/en/wp-content/uploads/2021/06/act500062008en.pdf> [<https://perma.cc/P32C-EJ5B>] (last visited Nov. 20, 2022).

161. *Id.*

162. *See Study: International Data Shows Declining Murder Rates After Abolition of Death Penalty*, DEATH PENALTY INFO. CTR. (Jan. 3, 2019), <https://deathpenaltyinfo.org/news/study-international-data-shows-declining-murder-rates-after-abolition-of-death-penalty> [<https://perma.cc/M98M-A95Z>].

163. *Id.*

164. *NEW PODCAST: DPIC Study Finds No Evidence that Death Penalty Deters Murder or Protects Police*, DEATH PENALTY INFO. CTR. (Sep. 12, 2017), <https://deathpenaltyinfo.org/news/new-podcast-dpic-study-finds-no-evidence-that-death-penalty-deters-murder-or-protects-police> [<https://perma.cc/XPU7-JTNF>].

165. *Id.*

166. *Id.*

167. *Id.* (quoting Robert Dunham, Executive Director of Discussions with DPIC podcast).

will deter traffickers more effectively than other punishments.<sup>168</sup> Despite thousands of executions being carried out for this purpose, there is still no clear evidence that the death penalty has “had any identifiable effect in alleviating drug trafficking and abuse.”<sup>169</sup> This argument can be clearly illustrated by looking at other countries.

For example, in Saudi Arabia, officials responsible for combating drug trafficking claimed that drug-related crimes dropped by as much as fifty percent since the death penalty was introduced in 1987.<sup>170</sup> However, the number of executions for drug offences began to rise in 1993, implicitly contradicting this claim.<sup>171</sup> Moreover, 2,900 people in Iran were executed between 1979 and 1995 for drug offences.<sup>172</sup> Despite such a high execution rate, Iran was the main route utilized by drug traffickers to transport heroin from Afghanistan and Pakistan to Europe.<sup>173</sup>

Locally, 200 people in Malaysia were executed for drug offences between 1975 and 1995.<sup>174</sup> Despite this, the government’s report notes that “[t]he increasing availability of heroin has contributed to the growing demand for that drug in Malaysia.”<sup>175</sup> In January 1985, the acting Inspector General of Police of Malaysia was reported as saying the death penalty “did not seem to deter traffickers.”<sup>176</sup> Moreover, in February 1986, the Deputy Minister of Home Affairs of Malaysia stated that the number of drug traffickers was increasing despite the mandatory death penalty.<sup>177</sup>

The clear lack of deterrence imposed by the death penalty is evident to global bodies. In December of 1985, at a meeting of the UN Expert Group on Countermeasures to Drug Smuggling by Air and Sea, it was noted that the fact that the death penalty was promulgated as a maximum penalty did not necessarily deter trafficking.<sup>178</sup> Rather, in some cases it made prosecution more difficult because courts were inclined to require a much higher standard of proof where the death penalty was possible or mandatory.<sup>179</sup> “The most effective deterrent was assuredly the certainty of detection and arrest.”<sup>180</sup>

#### 4. Effective Drug Trafficking Deterrents

Perceptions of deterrence are largely centered around the perspectives of those charged with intercepting, arresting, and prosecuting smugglers.<sup>181</sup> However, to accurately determine what deters drug trafficking, the traffickers’

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168. *The Death Penalty: No solution to illicit drugs*, AMNESTY INT’L at 3 (Oct. 1995), <https://www.amnesty.org/en/documents/act51/002/1995/en/> [<https://perma.cc/86LC-GS4U>].

169. *Id.*

170. *Id.* at 18.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.* at 19.

175. *Id.*

176. *Id.* at 20.

177. *Id.*

178. *Id.* at 20-21.

179. *Id.* at 21.

180. *Id.*

181. See generally Layne et al., *Measuring the Deterrent Effect of Enforcement Operations on Drug Smuggling, 1991-1999*, 7 TRENDS IN ORGANIZED CRIME 66, 67-73 (2002).

perspectives are important to consider.<sup>182</sup> For example, most observers infer that the sole reason for individuals to become involved in crime is to make money.<sup>183</sup> However, other factors such as acting in concert with friends and a lifestyle of thrill seeking were also attributes of smuggling involvement.<sup>184</sup>

In a 2002 study, researchers undertook a mixed qualitative-quantitative approach to studying the relationship between drug enforcement operations and cocaine trafficking.<sup>185</sup> One method of measuring deterrence was to ask convicted cocaine traffickers closed-ended questions, which forced them to consider the potential effects of different levels of arrest, conviction, and incarceration.<sup>186</sup> Importantly, this proved difficult as the subjects did not conceptualize risk in the same probability terms as governmental agencies or social scientists.<sup>187</sup> Such an observation raises the question of whether the current penal methods imposed against drug traffickers generate the deterrence the government thinks it does. The results from the study further exemplify this question.

First, the subjects were asked whether they would continue to smuggle drugs at varying chances of being arrested (i.e. 1 out of 100, 10 out of 100).<sup>188</sup> Ninety-four percent stated that they would still offend if the risk of arrest was ten percent, and sixty-three percent said they would still offend if the risk of arrest was fifty percent.<sup>189</sup> Accordingly, the risk of arrest must be high in order to yield a deterrent effect.<sup>190</sup> Additionally, traffickers often do not feel deterred from trafficking via waterways because they believe law enforcement is unable to spot them, or if spotted, sophisticated compartments make it virtually impossible for drugs to be located.<sup>191</sup> Thus, the traffickers' perceived ability to neutralize the likelihood of arrest and its consequences allows them to convince themselves the odds are in their favor.<sup>192</sup>

However, increased prospects of conviction provide a more powerful deterrent than arrest.<sup>193</sup> Prior to being convicted, most of the interviewees viewed their chances of being convicted as slim.<sup>194</sup> In fact, many interviewees echoed the notion that they were unfamiliar with the legal process by which they would be convicted.<sup>195</sup> "I had no idea how the legal system worked . . . it's stacked pretty steeply in their favor . . . even if the case is weak, they can get you convicted. They could convict a dead cat, I think."<sup>196</sup>

The role of increased prison terms had the most significant deterrent effect. While 75 percent of subjects would continue to offend if a sentence of 10

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182. *See id.* at 74.

183. *Id.* at 75.

184. *Id.* at 75-76.

185. *See generally id.* at 74.

186. *Id.* at 80.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* at 80-81.

191. *Id.* at 85.

192. *Id.* at 81.

193. *Id.*

194. *See id.*

195. *See id.*

196. *Id.*

years was imposed upon conviction, not one subject indicated they would still offend if the sentence was 25 years.<sup>197</sup>

Another often-cited method of deterrence is interdiction. Interdiction is defined in the context of drug trafficking as the act of preventing illicit drugs from reaching their destination.<sup>198</sup> In 1989, Rockwell International conducted a study on drug selling and trafficking. Relying on interviews with prison inmates, Rockwell defined deterrence as “that level of risk created when interdiction efforts are successful.”<sup>199</sup> The premise behind Rockwell’s approach was that, when risks increase, those responsible for smuggling drugs are more likely to alter their behavior.<sup>200</sup>

The average perceived risk of interdiction from those interviewed was thirty percent, with associate’s chances reported as 13.5 percent.<sup>201</sup> A forty percent interdiction rate was around where those interviewed would have altered their behavior and chosen not to smuggle drugs.<sup>202</sup> Qualitatively, larger-scale drug traffickers reported that the risk of apprehension was low if care and planning were adequate.<sup>203</sup> Moreover, those traffickers told interviewers that the United States government publicizes its interdiction efforts, reducing the need for intelligence operations.<sup>204</sup>

The Institute for Defense Analysis (IDA) also analyzed interdiction, noting that most of the cost associated with cocaine is import costs.<sup>205</sup> A major component of those import costs comes from interdiction.<sup>206</sup> The IDA determined that interdiction efforts in a major source zone or production sector produces the greatest deterrent effect.<sup>207</sup> Additionally, deterring the air transport of drugs was found to be between 10 and 100 times more effective in disrupting supply levels than previously established.<sup>208</sup> Thus, a two percent interdiction rate was determined as the key threshold for deterring drug interdiction: any risk at or below two percent was part of the “cost of doing business,” but risk above that level increased traffickers’ wariness.<sup>209</sup> Moreover, the arrest of associates, loss of personal property, or loss of drugs required much higher thresholds of apprehension to produce deterrent effects, implying that seizing more drugs without arrest was unlikely to yield deterrent effects.<sup>210</sup> Accordingly, the IDA study found that interdiction resulting in arrest was the most likely route of producing deterrent effects.<sup>211</sup>

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197. *Id.* at 82.

198. Bureau of Int’l Narcotics and L. Enf’t Aff., *Eradication and Interdiction*, U.S. DEPT. OF STATE, <https://www.state.gov/eradication-and-interdiction/> [<https://perma.cc/35LG-F8T5>].

199. Layne, *supra* note 181, at 68.

200. *Id.*

201. *Id.* at 69.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.* at 70.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *See id.*

The study above arguably reflects the notion of restrictive deterrence. Restrictive deterrence occurs when an individual curtails a certain type of criminal activity during some period because the curtailment in whole or part is perceived to reduce the risk that they will be punished as a response to the activity.<sup>212</sup> Restrictive deterrence is only applicable to those who have committed a particular crime at least once.<sup>213</sup> Restrictive deterrence is expanded into two distinct types: probabilistic and particularistic restrictive deterrence.<sup>214</sup> The former refers to reduction in crime frequency, and the latter refers to skills for evasion that offenders develop to carry out an offense in a manner more likely to go undetected.<sup>215</sup>

Restrictive deterrence is particularly relevant in the case of those who use, deal, traffic, or manufacture illegal drugs (drug offenders).<sup>216</sup> In particular, drug offenders have generated strategies that counteract the threat of punishment and have shown their adaptiveness to cope to innovate new ways to commit drug crimes.<sup>217</sup> Drug offenders have a high likelihood of recidivism despite the threat of punishment.<sup>218</sup> A 2021 study found that drug offenders employ probabilistic strategies to determine how they can commit a crime without being arrested and engage in certain reduction strategies to conceal their crimes.<sup>219</sup> In particular, those with the most power in drug operations pass risks from themselves onto lower-level distributors—the drug runners—by never engaging in activities that can lead to police surveillance.<sup>220</sup> This process enables the true dealers to shield themselves from police surveillance, enabling them to escape the criminal justice system.<sup>221</sup>

Accordingly, it is apparent that various factors are at play regarding deterrence in the case of drug trafficking. First, traffickers feel as though they can take measures to avoid arrest in the first place and would only cease trafficking if the likelihood of arrest increases. Second, high-level drug offenders managing the lower-level drug runners shield themselves from criminal responsibility by refusing to run the drugs themselves. Third, the high-level drug offenders are less deterred by the prospects of their drug runners being apprehended and consider it as a cost of doing business. Consequently, the primary deterrent for the high-level offenders facilitating drug trafficking stems from impossibility of being caught and severe financial loss due to interdiction.

##### 5. *Singapore Can Achieve Maximum Deterrence Without the Death Penalty*

Singapore's imposition of the death penalty focuses entirely upon the trafficker, rather than the drugs. At this point in time, would-be traffickers are

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212. Xin Guan & T. Wing Lo, *Restrictive Deterrence in Drug Offenses: A Systematic Review and Meta-Synthesis of Mixed Studies*, 12 *FRONTIERS IN PSYCH.* Aug. 2021, at 1.

213. *Id.*

214. *Id.* at 2.

215. *See id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* at 5.

220. *Id.* at 6.

221. *Id.*

still caught trying to cross Singapore's borders with illicit drugs. Implicitly, the "nerve centers" of drug trafficking rings still believe profits can be made if their drugs enter Singapore. If Singapore wishes to prevent all drug couriers from entering its borders, the government needs to redirect its strategic focus from individual couriers to the "nerve centers" of drug trafficking rings.

Singapore does not need to impose the death penalty to achieve maximum deterrence. Singapore has deterred trafficking on an individual basis through its imposition of lengthy sentences and caning. For example, Singapore imposes a *minimum* penalty of 20 years in prison and 15 lashes of the cane for trafficking cocaine.<sup>222</sup> As discussed previously, 100 percent of cocaine traffickers interviewed stated they would be deterred from trafficking cocaine if the punishment was 25 years in prison.<sup>223</sup> It is not unreasonable to infer that a sentence of 20 years with the addition of physical punishment may have an equal deterrent effect to 25 years without physical punishment. Therefore, Singapore's *minimum* punishment aligns with the punishment that provides *maximum* deterrence for cocaine traffickers. The imposition of the death penalty in addition to its non-capital punishments is likely not providing any further deterrent effects.

Rather, the government needs to redirect its focus to interdiction. As discussed above, a combination of interdiction and arrest is likely the most effective method of deterring drug traffickers.<sup>224</sup> If Singapore continues to impose its lengthy sentences and physical punishment, while also ensuring that the "nerve centers" of drug trafficking organizations are punished by losing a large amount of their drugs to interdiction, international drug trafficking rings would be more effectively deterred from sending future couriers to Singapore. While couriers may be replaceable, the substantial financial loss from interdiction may make trafficking to Singapore even more unprofitable. Given that money is a primary motivator in drug trafficking, weak prospects of financial gain may act as a further deterrent from trafficking drugs into Singapore. As discussed previously, enacting less stringent drug laws does not necessarily correlate to increased drug usage among a nation's population.<sup>225</sup> Indeed, less stringent drug laws may enable governments to focus its efforts on the interdiction of large-scale offenders, rather than smaller offenders.<sup>226</sup> Simply put, Singapore needs to make it financially unprofitable for traffickers to even attempt to cross the border in the first place.

### III. Counterarguments

A potential argument against the removal of the death penalty may be that it will lead to an influx of drug trafficking into Singapore, as it will no longer deter traffickers. First, the death penalty is—again—not an effective deterrent

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222. Misuse of Drugs Act 1973, sch. Second, at 5(5)(a).

223. See Layne, *supra* note 181, at 82.

224. See *id.*, at 70.

225. What Can We Learn, *supra* note 75, at 1010.

226. *Id.* at 1011.

to drug trafficking.<sup>227</sup> Because the death penalty is not an effective deterrent to drug trafficking, its removal will not result in an influx of drug traffickers to Singapore. Second, if the government wishes to prevent an increase in drug trafficking, the death penalty is not the least restrictive means of doing so. Instead, the Singaporean government may implement extremely strict strategies such as the “100% Control” method seen in the Netherlands to interdict drugs that may enter the country.<sup>228</sup> Singapore could allocate greater resources to its ports of entry, focusing its efforts on drug detection and interdiction to make any trafficking attempts into the country unprofitable. Moreover, greater intelligence efforts and operations within the small nation’s borders could affect drug organizations’ ability to make a profit.

Some may argue that Singapore’s low rates of drug use in comparison to other countries dictates that its imposition of the death penalty is more effective than less stringent methods, or that removing it will create a sharp increase in drug use within the country. However, Malaysia, Indonesia, and other countries all also impose the death penalty in drug trafficking cases.<sup>229</sup> Despite this, Malaysia has seen a recent and significant rise in drug use among its population, with 5.5 percent reporting drug use within their lifetime and 3.5 percent reporting use in the past 30 days.<sup>230</sup> Comparatively, Singapore had a total of 2,724 drug users in 2021,<sup>231</sup> out of a population of around 5.9 million, a miniscule 0.00046 percent.<sup>232</sup> Thus, Singapore has a much lower drug use rate per capita than its neighbors, despite having the same legal policy for drug traffickers. Incredibly, Singapore has seemingly successfully curated a population that does not wish to engage in drug use like neighboring countries, and as seen with Portugal, the loosening of drug laws may not necessarily correlate to increased drug use by a nation’s population.<sup>233</sup> Singapore can therefore cautiously relax its death penalty laws without expecting an increase in drug use among its population.<sup>234</sup>

## Conclusion

As previously discussed, Singapore heavily justifies its use of the death penalty for drug traffickers through the principles of deterrence.<sup>235</sup> However, Singapore’s imposition of such a harsh penalty not only contradicts international public sentiment, but it also directly opposes substantive research into

227. See, e.g., Radley, *supra* note 152, at 3. See also *supra* text accompanying notes 123-159.

228. See, e.g., International Drug Policy Consortium, *supra* note 103.

229. See, e.g., Elliot Brennan, *Drugs and the death penalty in Southeast Asia*, THE INTERPRETER (Jan. 23, 2015), <https://www.lowyinstitute.org/the-interpreter/drugs-death-penalty-southeast-asia> [https://perma.cc/XV7D-HHN2].

230. Ismail et al., *Prevalence of Drug and Substance Use among Malaysian Youth: A Nationwide Survey*, 19 INT’L J. OF ENV’T RSCH. & PUB. HEALTH 1, 1 (2022).

231. *Number of drug abusers in Singapore from 2012 to 2021*, Statista, <https://www.statista.com/statistics/1007331/dug-abuser-numbers-singapore/> [https://perma.cc/2PFY-ZP3W].

232. *Singapore Population*, WORLDOMETER, <https://www.worldometers.info/world-population/singapore-population/> [https://perma.cc/T4X5-JV6K] (last visited Dec. 17, 2022).

233. What Can We Learn, *supra* note 75, at 1010.

234. See *id.*

235. See Yap, *supra* note 1, at 138.

the subject matter of deterrence.<sup>236</sup> Consequently, the Singaporean government disregards legal scholars', international bodies', and researchers' evidence in favor of its retentionist policies. Such neglect of modern research has evidently come at the cost of human lives and human rights violations.

Therefore, Singapore should cease its use of the death penalty in drug trafficking cases. Such a large decision may sway fellow retentionist nations in Southeast and East Asia to do the same and could have the effect of preventing future human rights violations. Specifically, Singapore should seek to redirect its efforts away from executing low-level offenders and direct its resources to interdiction at borders with the goal of making trafficking financially unsustainable for the high-level trafficking facilitators. Although unlikely, as Singapore remains aggressively retentionist, this outcome would allow the region to refocus its attitudes towards drug abuse. If made possible, a refocus may help those in the region who are in dire need of addiction treatment by providing greater resources for them to receive the help they require.

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236. See, e.g., *Death penalty: The international framework*, *supra* note 118 (discussing how the death penalty is not a solution to drugs).