



EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

The Head of Delegation

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Mr Timothy M Lockwood
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Subject: Letter of objection to the proposed regulations for a new protocol for executions in the State of California

Dear Mr Lockwood,

As Ambassador of the European Union to the United States of America, I am writing you, firstly, to reiterate the long standing opposition of the EU to the application of the death penalty under any circumstances anywhere. Accordingly, the EU aims at universal abolition of the death penalty, seeking its global moratorium as a first step. We believe that the elimination of the death penalty is fundamental to the protection of human dignity, and to the progressive development of human rights. By its very nature, the execution of the death penalty means that any miscarriage of justice or failure in its application cannot be reversed. No legal system is immune from error, nor is there any reliable evidence to support the argument that death penalty is deterrent to serious crime.

Secondly and most importantly, the reason for this letter is to express the specific EU opposition to the proposed regulations establishing a new protocol for executions in the state of California announced in the Notice of Change to Regulations Number 15-10 issued on 6 November 2015. We are concerned that the proposed amendments and its provisions could lead to an end of the de facto moratorium on the death penalty in California that has been in place since 2006.

The EU calls on all states that still maintain death penalty to respect international standards guaranteeing the protection of the right of those facing death penalty, in particular the minimum standards. The EU considers that in countries where death penalty still exists, is

should be carried out so as to inflict the minimum possible suffering to the convicted. I am concerned that the proposed amendments do not ensure this.

Our first objection is to Article 7.5 (?) Article 3349 "Method of Execution" which allows a prisoner to choose between death in a gas chamber or by lethal injection. I take this opportunity to remind you that the **UN Human Rights Committee has affirmed that the use of the gas chamber in the State of California involves excessive and gratuitous suffering, and that it is therefore contrary to the Article 7 of the International Covenant on Civil and Political Rights (Chitat Ng v. Canada, Communication No. 469/1991, U.N. Doc. CCPR/C/49/D/469/1991 (1994))**. For your information, it was the case of Charles Chitat Ng who fought extradition from Canada to the United States because he might face execution by lethal gas. After reviewing evidence concerning the manner by which lethal gas kills and the length of consciousness after asphyxiation begins, the committee concluded that execution by means of lethal gas "would not meet the test of 'least possible physical and mental suffering,'" and it thus was cruel and inhuman. For obvious historical reasons the European Union finds this methodology particularly abhorrent.

Our second objection is the protocol of lethal injection which allows the use of chemicals injected into the prisoner. The proposed regulation provides no guarantee to the prisoner that the chemicals involved will meet standards of humane treatment. Forcing a prisoner to choose between the gas chamber and lethal injection of an unknown substance would in the view of the EU be additional violation of Article 7 ICCPR, which stipulates that, "No one shall be subjected to torture or to **cruel, inhuman or degrading treatment or punishment**. In particular, **no one shall be subjected without his free consent to medical or scientific experimentation**". It is impossible to suggest that a prisoner forced to choose between death in gas chamber or lethal injection is in any way exercising his/her own free will. The EU finds the entire new procedure for lethal injection outlined in the new Section Title 3349.I to be incompatible with international standards.

We would further note that there is no provision in the new protocol to ensure the respect of the Vienna Convention on Consular Relations' rights to consular notification for foreign nationals who are arrested in California and who possibly face a death sentence.

Thus for these reasons, the European Union strongly objects the new protocols for applying the death sentence in the State of California. We would like to urge the Californian authorities to abolish capital punishment, following the positive example of the increasing number of US States who have already done so.

Yours sincerely,



David O'Sullivan
Ambassador