



# A “most serious crime”?

## International Human Rights Law and the Death Penalty for Drug Offences

**Rick Lines**

**Senior Policy Advisor**

**International Harm Reduction Association**

18th International Conference on the Reduction of Drug-Related Harm

Warsaw, Poland

15 May 2007

## Status of the Death Penalty Worldwide

- 129 states have abolished capital punishment in law or in practice
- 68 “retentionist” states
- Half of retentionist states apply the death penalty for drug-related offences
- Majority being in the Middle East, North Africa and the Asia Pacific regions

# Capital Punishment and Drugs

- Executions for drugs carried out in
  - China
  - Egypt
  - Indonesia
  - Kuwait
  - Malaysia
  - Saudi Arabia
  - Singapore
  - Thailand
  - Viet Nam
- 2005 – 94% of all known executions took place in China, Iran, Saudi Arabia and the USA

# Capital Punishment and Drugs

- **Malaysia** (July 2004 — July 2005): **36 of 52** executions were for drug trafficking
- **Saudi Arabia** (2003): **26 of 50** executions were for drug-related offences; in 2004 **at least 33** executions were carried out for drugs
- **Viet Nam** (2003): Government reported to the UN that “the death penalty has been **mostly given** to persons engaged in drug trafficking.”
- **Singapore** (1994 — 1999): **76% of all executions** were for drug-related offences

# Capital Punishment and Drugs

## China: UN International Day Against Drug Abuse and Illicit Drug Trafficking

- 2001 — **Over 50** people were convicted and publicly executed for drug crimes at a mass rallies, at least one which was broadcast on State television
- 2002 — **64** public executions in rallies across the country
  - Chongqing: **24 people shot**

# Capital Punishment and the ICCPR

Art 6(2): “In countries which have not abolished the death penalty, sentence of death may be imposed only for the **most serious crimes.**”

## Threshold necessary to satisfy the requirements of Article 6(2)

1. “Most serious crimes” should be interpreted in the most restrictive and exceptional manner possible
2. The death penalty should only be considered in cases where the crime is intentional, and results in lethal or extremely grave consequences
3. States should repeal legislation allowing capital punishment for economic, non-violent or victimless offences

# Do drug offences meet the threshold of “most serious crimes”?

1. International Human Rights Law
2. Domestic legislation in retentionist states
3. International Narcotics Control Treaties
4. International Refugee Law
5. International Criminal Law (The Rome Statute of the International Criminal Court)



# International Human Rights Law

UN Special Rapporteur on Extrajudicial,  
Summary or Arbitrary Executions (1996)

“[T]he death penalty should be eliminated for crimes such as economic crimes and drug-related offences.”

# International Human Rights Law

## Human Rights Committee

- **Sri Lanka** (1995) “drug-related offences” listed among those that “do not appear to be the most serious offences under article 6 of the Covenant.”
- **Kuwait** (2000) “serious concern over the large number of offences for which the death penalty can be imposed, including very vague categories of offences relating to internal and external security as well as drug-related crimes.”
- **Thailand** (2005) HRC states definitively for the first time that capital punishment for drug offences is in violation of Art. 6(2) of the ICCPR

Drug-related offences do not  
meet the threshold of  
“most serious crimes” in  
International Human Rights Law

# Capital Punishment for Drugs in Domestic Legislation

- Drug trafficking, cultivation, manufacturing and importing/exporting
- Possession
  - **Iran:** penalty may be calculated cumulatively
- **Sudan:** proprietors of cafés or restaurants where drug use or trafficking takes place are liable for the death penalty
- **Jordan, Egypt and Syria:** mandatory death sentence if the offender is a public official or government employee
- **Egypt:** mandatory death sentence for “Anyone who, by whatever means of force or deceit, induces any other person to take any narcotic substance”
- **Iran:** repeat conviction for “intentionally caus(ing) another person to be addicted to the drugs”

# Threshold for Capital Punishment

UN Secretary-General (1995) noted the threshold for capital drug offences ranged from the possession of **2g** to the possession of **25,000g** of heroin

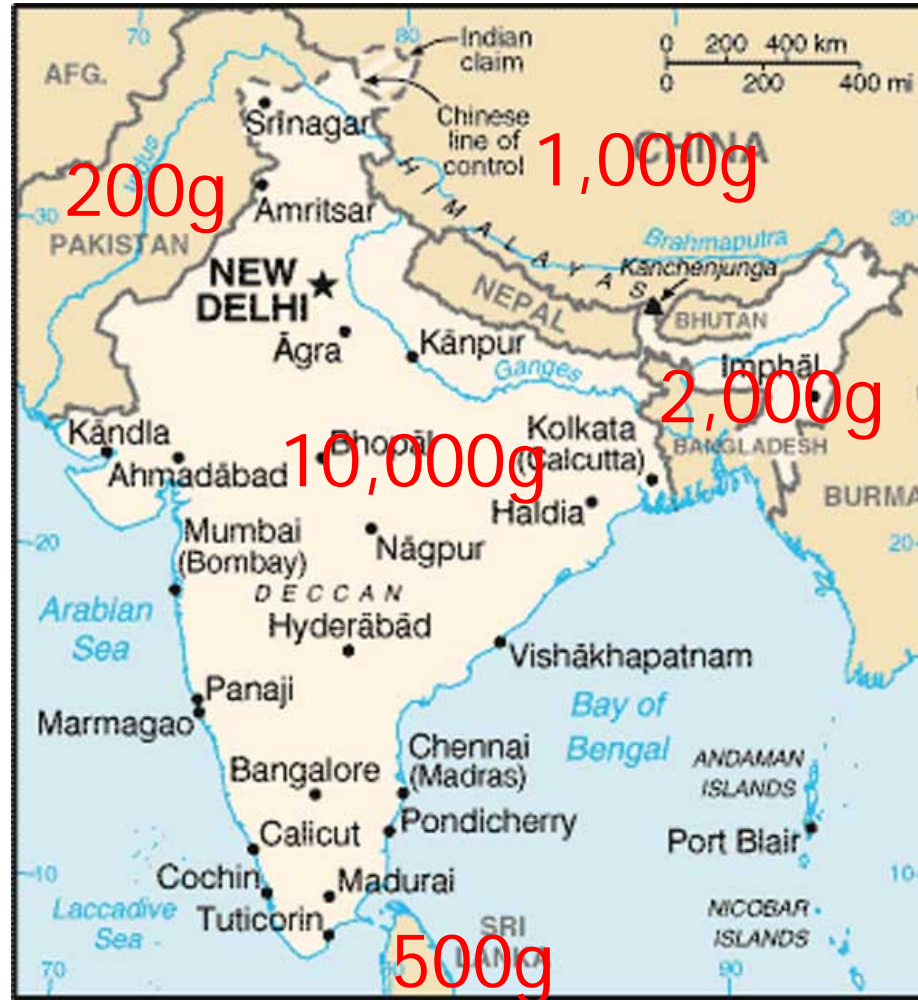
# Domestic Narcotics Legislation

Death  
Penalty:  
**Heroin**



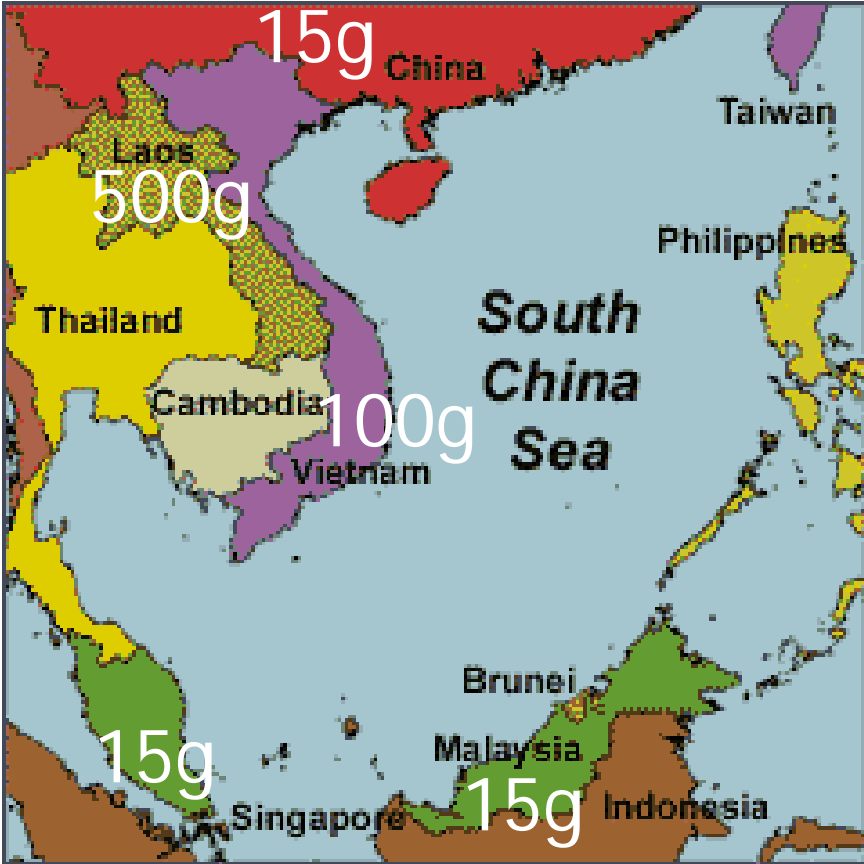
# Domestic Narcotics Legislation

Death  
Penalty:  
**Opium**



# Domestic Narcotics Legislation

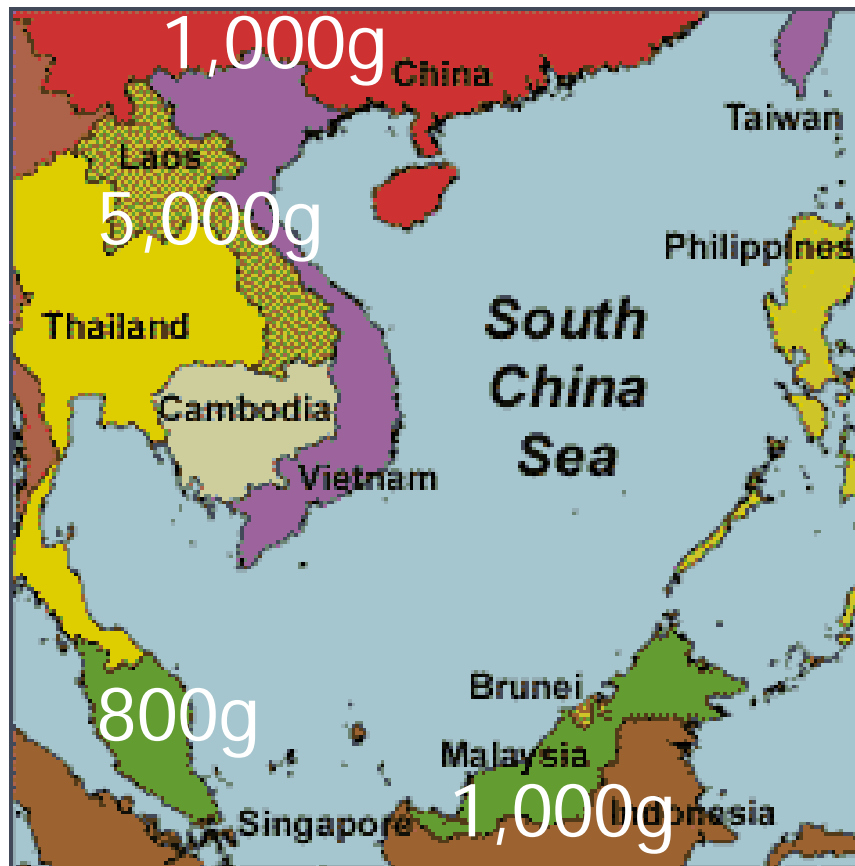
Death  
Penalty:  
**Heroin**



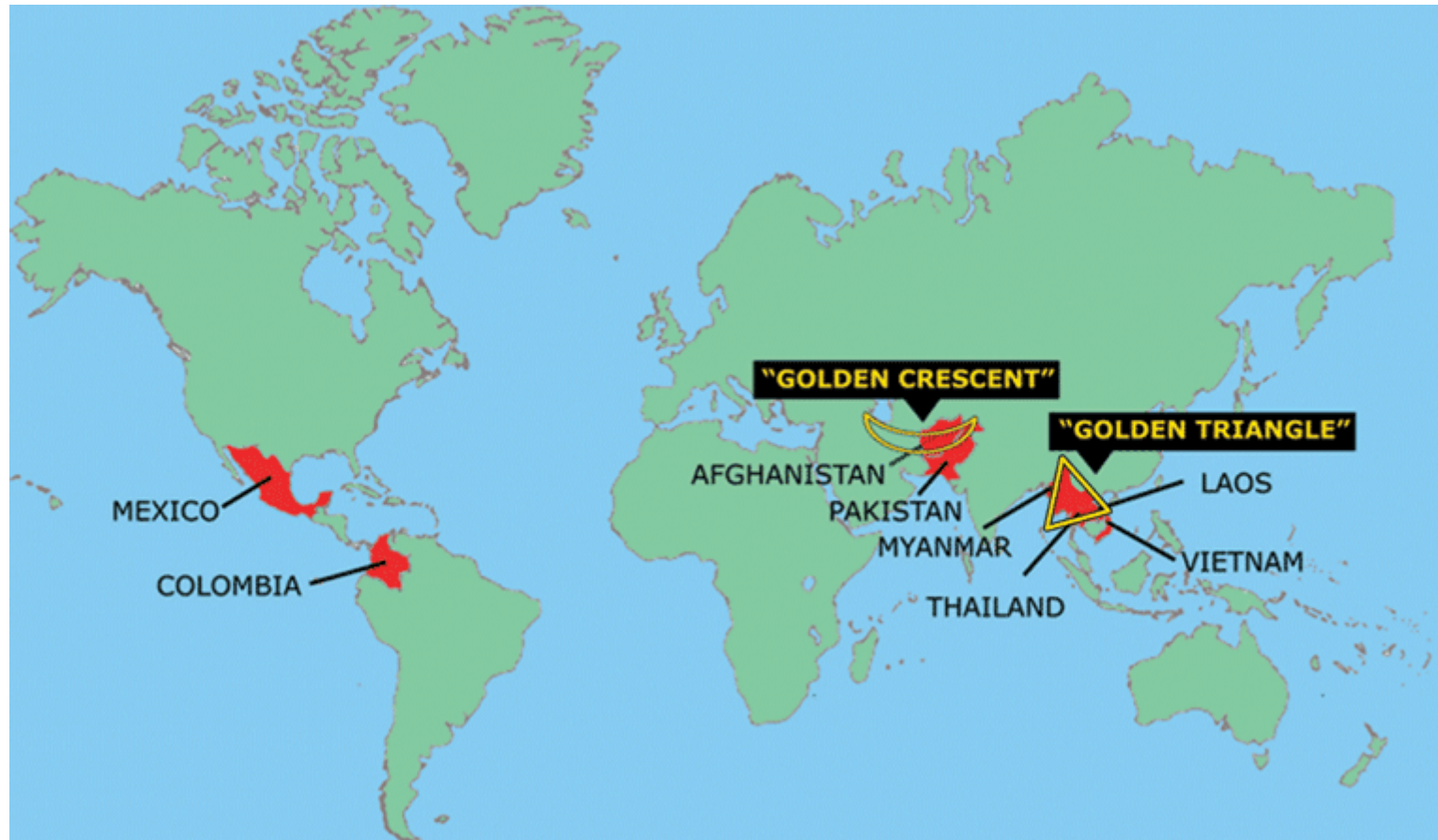


# Domestic Narcotics Legislation

Death  
Penalty:  
**Opium**



# Domestic Narcotics Legislation



Drug-related offences are too numerous and too arbitrary to satisfy the threshold of "most serious crimes"

# International Narcotics Control Regime

- *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* defines criminal and penal responses to drug control
- **Art 3:** Proscribes a wide range of activities related to the production, cultivation, trafficking, transportation, possession or purchase of illegal narcotics, as well as other offences related to laundering of proceeds from the drug trade.

# International Narcotics Control Regime

- Considers all of these offences as “**grave**” and “**serious**” in nature
- Aggravating factors may elevate “serious” offences to the level of “**particularly serious**”
  - participation with domestic or international organised crime groups
  - use of violence or firearms
  - involvement of minors and/or the collaboration of public officials

Drug-related offences as defined in the International Narcotics Control Regime do not meet the threshold of “most serious crimes”

# International Refugee Law

- *Convention Relating to the Status of Refugees*
  - Article 1F “exclusion clauses”, or provisions under which certain persons can be denied the benefits of refugee protection
- **Article 1F(b)**
  - “The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that...He has committed a **serious non-political crime** outside the country of refuge prior to his admission to that country as a refugee”

# International Refugee Law

## *UNHCR Guidelines and Background Note*

- murder, rape and armed robbery “would undoubtedly qualify as serious offences”, while “petty theft” or drug possession for personal use would not
- Other offences could be elevated to the level of “serious” if they were accompanied by aggravating factors as the use of violence or weapons, if they caused injury to others or if they were part of a pattern of habitual offending.
- UNHCR does not take a position on whether drug trafficking per se meets the threshold of “serious non-political crime”



# Refugee Law – State Practice

- Domestic courts and tribunals have generally erred on the restrictive side in interpreting drug trafficking as a crime serious enough to warrant exclusion under refugee law
- The domestic courts have found this term to include theft or robbery, bribery, smuggling, fraud and tax evasion, and aggravated assault and wounding
- While a basis for exclusion these are not grounds for execution, nor approach the threshold of “most serious crimes” in international human rights law

“Serious non-political crimes” do not satisfy the threshold of “most serious crimes”

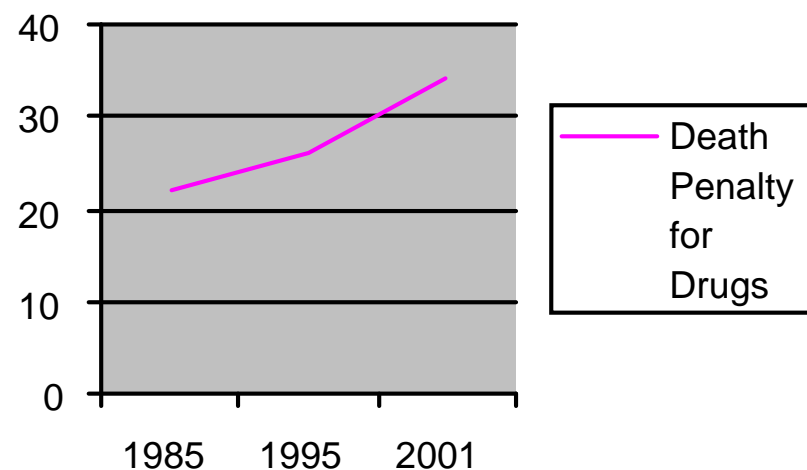
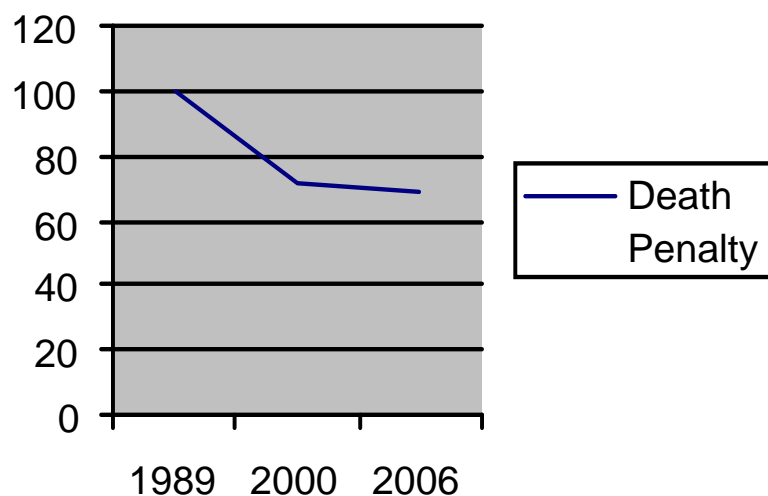
# International Criminal Law

- The Rome Statute: International Criminal Court's jurisdiction "shall be limited to the most serious crimes of concern to the international community as a whole"
- Identifies "most serious crimes" as genocide, crimes against humanity, war crimes and the crime of aggression
- Efforts were made during the drafting of the Rome Statute to include major drug trafficking. These efforts failed.

Drug-related offences do not meet the threshold of “most serious crimes” under any relevant legal framework.

Execution of people on this basis is in violation of international law.

# Capital Punishment as an indicator of growing human rights abuses



# End Capital Punishment!

## International Campaign Against the Death Penalty for Drug Offences

Rick Lines

*rick.lines@ihra.net*

International Harm Reduction Association

*www.ihra.net*

Irish Penal Reform Trust

*www.iprt.ie*