




**Paper :** Civil and Political Rights

**Module :** Second Optional Protocol to ICCPR



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Description of Module	
<b>Subject Name</b>	Human Rights and Duties
<b>Paper Name</b>	Civil and Political Rights
<b>Module Name/Title</b>	Second Optional Protocol to ICCPR
<b>Module Id</b>	01
<b>Pre-requisites</b>	
<b>Objectives</b>	
<b>Keywords</b>	

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## **Learning Outcomes**

This module will give an understanding of the purpose of the Optional protocol and its effect.

Students after studying this module are expected to have an elementary understanding of the text of the Optional Protocol and its scope.

## **Introduction**

This Optional protocol was entered into force on 11<sup>th</sup> July 1991 with 60 state parties to it. Just as First Optional Protocol was focused on communications received by Human Rights Committee, this Second Optional protocol is focused on the abolition of death penalty. It is believed that by abolishing death penalty it will lead to a progression and growth in development of human rights. By its essence, death penalty is considered to be grossly against the concept of human rights. Moreover, there have not been enough data to prove the effectiveness of death penalty as a form of punishment. In this light, this Optional Protocol upholds its importance as calls for abolition of death penalty by its state parties.

Article 6 of the covenant also enshrines the abolition of death penalty.

### **(Article 1-11)**

By virtue of Article 1 of this Optional Protocol, if any state party agrees to the provisions of this protocol then it cannot execute anyone within its jurisdiction. Moreover every state party will be obligated to take the measures required to abolish the death penalty if existing within their jurisdiction.

Article 2 clearly mentions that it is not permissible for the state to have any sort of reservation to the protocol except for death penalty awarded in cases of war and that too with respect to most serious crime. Such reservation can be made at the time of ratification or accession. Such a state party which makes such reservation will have to notify the Secretary General of the UN at the commencement and end of war concerning its territory.

The state party is also expected to inform the committee of the measures it took to give effect to the provisions of this protocol. If under Article 41 of the covenant, a state party has given the authority to the committee to receive the communications by other state party, then it will automatically extend to the provisions of this protocol. However, the state can absolve from this extended application by clarifying the no authority to be given to the committee for receiving communication with relation to this protocol at the time of ratification or accession. Same applies in case the state party to the First optional protocol agrees to the authority of the committee to receive communications by individual,

this shall extend to the present protocol unless and until specified to the contrary at the time of ratification or accession.

Any state who is a party to the covenant can sign for this optional protocol as per Article 7 of the protocol. It is subject to ratification and is open to accession. Just as First Optional Protocol, this protocol also comes into effect from three months after the date of deposit of the documents relating to ratification or accession by state and it shall apply to all parts without any limitation.

The Secretary General of the UN is responsible to inform all the state parties about the signatures, ratification and reservations, if any.

Below is provided the Declarations, Reservations and Objections by the State parties while signing the Second Optional protocol. ***The information below has been taken from the United Nations website<sup>1</sup> and will help students get an idea of the practical functioning*** :- It is interesting to read the extracts provided below as it provides the various Reservations made by the state parties while agreeing to the provisions of Second Optional Protocol to ICCPR and it also gives the 'Objections' raised by the other State parties to such Reservations.

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<sup>1</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-12&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-12&chapter=4&lang=en) as visited on 11<sup>th</sup> October 2015.

### Declarations and Reservations

*(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)*

#### Chile

##### Reservation:

The State of Chile formulates the reservation authorised under article 2, paragraph 1, of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and may in consequence apply the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

#### El Salvador

##### Reservation:

The Government of the Republic of El Salvador accedes to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty with an express reservation permitted to States under article 2 of the Protocol, which consists on the application of the death penalty in accordance with article 27 of the Constitution of the Republic of El Salvador, which reads as follows: 'The death penalty may be imposed only in the cases provided by the military laws during an international state of war'.

#### Guinea-Bissau

##### Declaration

Hereby declare that the declaration the Government has made in accordance with Article 41 of the International Covenant on Civil and Political Rights to recognize the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations do not extend to the provisions of the Second Optional Protocol, as provided in Article 4 thereof.

Also, declare that the competence that the Government of Guinea-Bissau recognizes for the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction does not extend to the provisions of the Second Optional Protocol, in accordance with the option provided in Article 5 thereof.

### Objections

*(Unless otherwise indicated, the objections were made upon ratification, accession or succession.)*

## **Austria**

7 April 2015

*With regard to the reservation made by El Salvador upon accession:*

“The Government of Austria has examined the reservation made by the Republic of El Salvador upon accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted on 15 December 1989.

The Government of Austria recalls that it is the object and purpose of the Second Optional Protocol to abolish the death penalty in all circumstances and that no reservations are permitted other than reservations made within the limits of Article 2 of the Protocol. In the light of the wording of Article 2 (1), a reservation to the Protocol is allowed to the extent that it concerns the application of the death penalty in times of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. According to Article 2 (2), the State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

According to the information available, the applicable provisions of the national legislation of El Salvador specifying the application of the death penalty to the most serious crimes of a military nature in wartime were not communicated to the Secretary-General.

The Government of Austria therefore objects to this reservation.

This objection shall not preclude the entry into force of the Protocol between Austria and the Republic of El Salvador.”

## **Finland**

7 April 2015

*With regard to the reservation made by El Salvador upon accession:*

“The Permanent Mission of Finland to the United Nations presents its compliments to

the Secretary-General of the United Nations and, referring to the Depositary Notification [C.N.201.2014.TREATIES-IV.12](#) of 8 April 2014 concerning the accession of the Republic of El Salvador to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, has the honor to communicate the following statement:

The Government of Finland has carefully examined the reservation made by the Republic of El Salvador to Article 2 of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

The Government of Finland recalls that it is the object and purpose of the Second Optional Protocol to abolish the death penalty in all circumstances and reservations are, as a main rule, not admissible. This object of aiming at the complete abolition of the death penalty enjoys the full support of Finland. However, the Government observes that, in light of the wording of Article 2(1), a reservation to the Protocol is allowed to the extent it concerns the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. The acceptability of such a reservation requires that the State Party making the reservation communicates, at the time of ratification or accession, to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

Accordingly, the Government of Finland would find the reservation made by the Republic of El Salvador acceptable provided it meets the requirements set out in Article 2(1) and (2). According to information available to the Government, the applicable provisions of the national legislation of the Republic of El Salvador were not communicated to the Secretary-General at the time of accession. Therefore, the Government of Finland objects to the reservation.

This objection shall not preclude the entry into force of the Protocol between Finland and the Republic of El Salvador. The Protocol will thus become operative between the two States without the Republic of El Salvador benefitting from its reservation.”

## France

6 April 2015

*With regard to the reservation made by El Salvador upon accession:*

The Government of the French Republic has examined the reservation made by the

Government of the Republic of El Salvador upon accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

In that reservation, the Government of the Republic of El Salvador states that it intends to make use of the right contained in article 2, paragraph 1 of the Protocol, providing for application of the death penalty in certain situations, pursuant to article 27 of the Constitution of El Salvador, according to which “The death penalty may be imposed only in the cases provided by the military laws during an international state of war”.

Article 2, paragraph 1 of the Protocol, however, requires that application of the death penalty be limited, “in time of war” to cases in which there is a “conviction for a most serious crime of a military nature committed during wartime”.

The absence of a specific restriction on the reservation to the “most serious” crimes committed during wartime seems not to meet the requirements of article 2, paragraph 1 of the Protocol.

In that regard, the reservation made by the Government of the Republic of El Salvador is inadmissible pursuant to the very provisions of the Protocol. Thus, the Government of the French Republic objects to the reservation made by the Government of the Republic of El Salvador to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. This objection does not preclude the entry into force of this Protocol between France and El Salvador.

### **Germany**

31 March 2015

*With regard to the reservation made by El Salvador upon accession:*

The Permanent Mission of the Federal Republic of Germany to the United Nations presents its compliments to the Treaty Section and, with reference to depositary notification [C.N.201.2014.TREATIES-IV.I2](#) dated April 8, 2014 regarding the reservation made by the Republic of El Salvador upon its accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death penalty of 15 December 1989, has the honour to communicate the following:

The Government of the Federal Republic of Germany has carefully examined the reservation made by the Republic of El Salvador upon its accession to the Second Optional

Protocol.

It recalls, that the complete abolition of the death penalty is the object and purpose of the Second Optional Protocol, and that according to Article 2 reservations are not permissible with the one exception of a reservation that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during war time. The Government of the Federal Republic of Germany believes that the reservation made by the Republic of El Salvador goes beyond the limits of Article 2 of the Optional Protocol, as it does not explicitly limit the application of the death penalty to the most serious crimes of a military nature. The Government of the Federal Republic of Germany therefore considers the reservation made by the Republic of El Salvador to be incompatible with the object and purpose of the Second Optional Protocol and that it consequently has to be considered impermissible.

The Government of the Federal Republic of Germany therefore objects to this reservation. This objection shall not preclude the entry into force of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty of 15 December 1989 between the Federal Republic of Germany and the Republic of El Salvador.

## Ireland

7 April 2015

*With regard to the reservation made by El Salvador upon accession:*

“The Government of Ireland welcomes the accession by the Republic of El Salvador to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

The Government of Ireland has examined the reservation made by the Government of the Republic of El Salvador to Article 2 thereof upon accession and recalls that it is the object and purpose of the Second Optional Protocol to abolish the death penalty in all circumstances and that no reservations are permitted other than reservations made in strict accordance with Article 2 of the Protocol.

The Government of Ireland considers that the reservation made by the Government of the Republic of El Salvador goes beyond the strict limits of Article 2 of the Protocol, as it neither explicitly limits the application of the death penalty to the most serious crimes of a

military nature committed during wartime nor indicates the relevant provisions of the Republic of El Salvador's national legislation applicable during wartime, which must be communicated, at the time of accession, to the Secretary-General of the United Nations. Should, however, the Government of the Republic of El Salvador have communicated clarification regarding these provisions to the Secretary-General pursuant to Article 2(2), this objection may be considered null and void.

The Government of Ireland recalls that, according to customary international law, as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of Ireland therefore objects to the aforesaid reservation made by the Government of the Republic of El Salvador to Article 2 of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

This objection shall not preclude the entry into force of the Protocol between Ireland and the Republic of El Salvador.”

## Italy

2 April 2015

*With regard to the reservation made by El Salvador upon accession:*

“The Permanent Mission of Italy to the United Nations presents its compliments to the Secretary-General of the United Nations in his capacity as depositary of the 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

The Government of Italy has examined the reservation made by the Republic of El Salvador upon accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, adopted in New York on December 15, 1989.

The Government of Italy recalls that it is the object and purpose of the Second Optional Protocol to abolish the death penalty in all circumstances and that no reservations are permitted other than reservations made in strict accordance with Article 2 of the Protocol. The reservation made by the Government of El Salvador goes beyond the limit of Article 2 of the Protocol, as it does not explicitly limit the application of the death penalty to the most

serious crimes of a military nature committed during wartime, which must be specified.

According to customary international law, as codified in the Vienna Convention on the Law of Treaties, a reservation incompatible with the object and purpose of a treaty shall not be permitted.

The Government of Italy therefore objects to the aforesaid reservation made by El Salvador to the Second Optional Protocol to the International Covenant on Civil and Political Rights and considers the reservation null and void.

This objection shall not preclude the entry into force of the Protocol between El Salvador and Italy. The Convention will enter into force between El Salvador and Italy without El Salvador [benefiting from the reservation.]”

### **Netherlands**

2 April 2015

*With regard to the reservation made by El Salvador upon accession:*

"The Government of the Kingdom of the Netherlands welcomes the accession of El Salvador to the Second Optional Protocol to the International Covenant on Civil and Political Rights, and has taken note of the reservation made by El Salvador with respect to Article 2 thereof upon accession.

The Government of the Kingdom of the Netherlands recalls that it is the object and purpose of the Second Optional Protocol to abolish the death penalty in all circumstances and reservations are, as a main rule, not admissible. This object of aiming at the complete abolition of the death penalty enjoys the full support of the Kingdom of the Netherlands. However, the Government observes that, in the light of the wording of Article 2(1), a reservation to the Protocol is allowed to the extent that it concerns the application of the death penalty in times of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. The acceptability of such a reservation requires that the State Party making the reservation communicates, at the time of ratification or accession, to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

Accordingly, the Government of the Kingdom of the Netherlands would find the reservation made by El Salvador acceptable, provided that it meets the requirements set out in Article 2(1) and (2). However, according to information available to the Government, the

applicable provisions of the national legislation of El Salvador specifying the application of the death penalty to the most serious crimes of a military nature in wartime were not communicated to the Secretary-General at the time of accession. Therefore, the Government of the Kingdom of the Netherlands objects to the reservation.

This objection shall not preclude the entry into force of the Protocol [between the Kingdom of the Netherlands and El Salvador]."

### Switzerland

6 March 2015

*With regard to the reservation made by El Salvador upon accession:*

The Swiss Federal Council has examined the reservation made by the Government of the Republic of El Salvador upon ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted on 15 December 1989.

The Federal Council recalls that, pursuant to article 2, paragraph 1, of the Protocol, no reservation is admissible except for a reservation that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime. The Swiss Federal Council believes that the reservation does not meet those conditions of validity as it does not limit the death penalty in time of war to the most serious crimes. Neither the article of the constitution quoted in the reservation nor the military laws to which it refers indicate such a limitation.

It is in the common interest of States that treaties to which they have chosen to become parties are respected by all parties, and that States are prepared to undertake any legislative changes necessary to comply with their treaty obligations.

The Swiss Federal Council objects to the reservation made by the Republic of El Salvador. This objection does not preclude the entry into force of the Protocol, in its entirety, between the Republic of El Salvador and Switzerland.

The ratification of this protocol is essential at the National Level as it prevents the execution in the confines of the state and it is essential at the International Level as it reaffirms the unified approach towards the abolition of death penalty and that it is against the human rights.

**Conclusion:**

The module on Second Optional Protocol to the International Covenant on Civil and Political Rights is focused on the abolition of death penalty. Death penalty as a type of punishment is considered to be the most severe one. There have been many movements across the world to get rid of this punishment as it is irreversible in nature. Although the countries where death penalty is allowed there are many procedural safeguards to ensure that there is no mistake in administration of this punishment but still if there is any miscarriage of justice then it may lead to death of an innocent person. There are various theories of punishment such as deterrence, reformation, retributive and there are arguments on both sides for and against this punishment. Infact, there is research which shows death penalty hasn't really been successful in deterring the potential offenders. This protocol doesn't allow state parties to ignore the requirement except in extreme situations such as wartimes. Procedure has been mentioned for state parties to express its reservation with respect to requirement and even for objections by other states.

