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CONTENTS

	Page
<i>Agenda item 59:</i>	
<i>Capital punishment</i>	1
<i>Organization of work</i>	4

Chairman: Mr. Erik NETTEL (Austria).

AGENDA ITEM 59

Capital punishment (A/7203, chap. XI, sect. B; A/7243)

1. The CHAIRMAN, recalling the origin of the item under discussion, said that the General Assembly in resolution 1396 (XIV) of 20 November 1959 had invited the Economic and Social Council to initiate a study of the question of capital punishment, of the laws and practices relating thereto, and of the effects of capital punishment, and the abolition thereof, on the rate of criminality. The Council in resolution 934 (XXXV) of 9 April 1963 had addressed certain recommendations to Governments of Member States and, at the same time, had asked for the studies to be broadened. The Assembly had endorsed the Council's action in its resolution 1918 (XVIII) of 5 December 1963. The first study, entitled Capital Punishment (ST/SOA/SD/9),^{1/} had been prepared in 1962, and it had been followed in 1967 by a further study entitled Capital Punishment—Developments 1961 to 1965 (ST/SOA/SD/10).^{1/} The comments of the Ad Hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders on the first of those two documents were before the Council at its thirty-fifth session.^{2/}

2. In 1967, the Council had forwarded to the Assembly a draft resolution submitted by Sweden and Venezuela (resolution 1243 (XLII), annex). The Assembly, in its resolution 2334 (XXII) of 18 December 1967, had invited the Council to instruct the Commission on Human Rights to consider the question of capital punishment, including that draft resolution, and to transmit its recommendations on the matter through the Council to the General Assembly at its twenty-third session. The Assembly had also invited the Council to seek the views of the Consultative Group on the Prevention of Crime and the Treatment of Offenders, which had met at Geneva in August 1968.

3. Consequently, the Committee had before it a draft resolution submitted by the Council in its resolution 1337 (XLIV) and contained in the note by the Secre-

tary-General (A/7243, para. 11) and a report of the Consultative Group on the Prevention of Crime and the Treatment of Offenders,^{3/} section V of which was annexed to the note by the Secretary-General. Under the terms of the draft resolution submitted by the Council, the Assembly would, inter alia, invite Governments of Member States to ensure the most careful legal procedures and safeguards for the accused in capital cases in countries where the death penalty obtained, inter alia, by providing for certain specified measures, and would also invite the Governments to inform the Secretary-General of their present attitude—with indication of the reasons therefor—to possible further restriction of the use of the death penalty or to its total abolition. The Committee also had before it the relevant section of the report of the Economic and Social Council (A/7203, chap. XI, sect. B).

4. Mr. FORSHELL (Sweden) paid a tribute to the brave men who had begun the fight for the abolition of capital punishment—Thomas More in the sixteenth century, George Fox in the seventeenth century, and Beccaria, Rousseau, Diderot and Voltaire in the eighteenth century. Tuscany had set an example by abolishing the death penalty in 1786, and many countries had followed suit in the nineteenth century. The arguments for and against capital punishment over the past 400 years had been summarized in two studies published by the United Nations, entitled Capital Punishment and Capital Punishment—Developments 1961 to 1965. Sweden, which was a staunch supporter of total abolition, realized, however, that the sentiments of each country were deeply rooted in their social, political, cultural and economic heritage, and therefore believed that no country could sit in judgement on any other for its attitude towards that question, even though the trend towards abolition was apparent in most countries.

5. When, in 1959, his delegation had proposed that the question of capital punishment should be the object of a study, the representative of Sweden had said^{4/} that the aim should be an objective study based on the historical, sociological, philosophical, legal and anthropological aspects of the question, which should not be undertaken in order to prove a certain point. She had thought, however, that such studies often led to the introduction of reforms and helped to bring about a solution, because they caused many facts which had so far been unchallenged to appear in a new light. Developments had proved those points, and the common ground on the question had been steadily expanding, as could be seen, in particular, from the

^{1/} The two studies were published in one volume in 1968 (United Nations publication, Sales No.: E.67.IV.15).

^{2/} Official Records of the Economic and Social Council, Thirty-fifth Session, Annexes, agenda item 11, document E/3724, sect. III.

^{3/} ST/SOA/SD/CG.2.

^{4/} See Official Records of the General Assembly, Fourteenth Session, Third Committee, 936th meeting.

report of the Consultative Group on the Prevention of Crime and the Treatment of Offenders. It appeared from paragraph 15 of section V of that report that all the members of the Consultative Group had been in favour of the abolition of capital punishment, which was increasingly becoming an exceptional sanction.

6. When the representative of Sweden had introduced the first version of the draft now before the Third Committee to the Social Committee of the Economic and Social Council on 16 May 1967, he had stated^{5/} that since the two main groups of thought on capital punishment had not radically changed their arguments, his delegation felt that the time had not yet come for proposing total abolition of that form of punishment but merely wished once more to draw attention to the matter.

7. He believed that some reference to the work of the Consultative Group should be included in the preamble of the draft resolution submitted by the Economic and Social Council (A/7243, para. 11). He proposed that a new paragraph, worded as follows, should be inserted after the sixth preambular paragraph:

"Taking note of the report of the meeting of the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders, held in August 1968, in so far as it relates to the question of capital punishment". ^{6/}

8. Operative paragraph 1 (a) was basically the same as the text which had been proposed the previous year; the former sub-paragraph (b) had set a time-limit of six months which some countries had found it difficult to accept, whereas the new wording left Member States free to set the time-limit they considered appropriate; the date mentioned in sub-paragraph (c) would allow Member States sufficient time. With respect to paragraph 2, the Secretary-General could send his invitation to Governments early in 1970. The provisions of paragraph 3 did not conform to the usual procedure, but he agreed that it would be desirable for the Commission on Human Rights not to study the question until it had been discussed by the Council, which could then give the Commission whatever instructions were necessary. The report should be submitted to the Council in 1971, and he proposed that the words "one of the 1971 sessions of" should be inserted after the word "through". ^{6/}

9. The draft submitted in 1967 had provided that Governments of Member States should periodically notify the Secretary-General of any death sentences passed and carried out in their countries. The Commission on Human Rights, which had been very divided on the subject, had not reached any decision on that provision, which it had placed in brackets. The Economic and Social Council had felt that, for the sake of unanimity during the International Year for Human Rights, it was better to delete it from the text which would be submitted to the General Assembly at its twenty-third session. As could be seen from paragraph 31 of section V of the Consultative Group's report, some members of the Group had considered

the proposed procedure to be of interest. He pointed out that the General Assembly, in its resolution 1721 B (XVI) of 20 December 1961 relating to international co-operation in the peaceful uses of outer space, had called upon States to furnish information regarding their activities and had requested the Secretary-General to maintain a public registry of launchings.

10. He hoped that the Committee would adopt the draft resolution submitted by the Economic and Social Council, with the two amendments which he had proposed.

11. Mr. FERRETTI (Italy) said he regretted that, in comparison with the decisions adopted in the past by various United Nations bodies, the progress made in the draft before the Committee was extremely limited. He feared, in particular, that operative paragraph 1 did not give enough encouragement to the abolition of capital punishment. It had been hoped that relatively rapid progress would be made following the adoption in 1963 of Economic and Social Council resolution 934 (XXXV)—the draft of which had been submitted by the Austrian and Italian delegations—but such had not been the case. Although the draft resolution before the Committee did not go far enough, his delegation would not oppose its adoption. He would have preferred that the words appearing in brackets in the text submitted by the Commission on Human Rights^{7/} be included in operative paragraph 1 (c) and in paragraph 3. He also supported the two amendments proposed by the representative of Sweden.

12. Mr. PAOLINI (France) said he feared that the debate on which the Committee had embarked might be premature. When the Committee's work was being organized, he had suggested that members should study the report of the Consultative Group on the Prevention of Crime and the Treatment of Offenders before opening a debate on capital punishment. In its resolution 2334 (XXII), the General Assembly had decided to seek the views of the Group on the draft resolution submitted by the Council. He asked whether the text which was annexed to document A/7243 was a summary of the Consultative Group's report or the full text of the recommendations made by the Group.

13. Mr. SCHREIBER (Director, Division of Human Rights) said that it was the full text of section V of the Consultative Group's report. The comments of the experts on the draft resolution proper appeared in paragraphs 6 to 9 of the annex to document A/7243.

14. Mr. BENSON (Australia) said that his delegation supported the draft resolution before the Committee. The two studies on the question of capital punishment published by the United Nations in 1962 and 1967 respectively were of very great interest, and his delegation saw value in the continued submission to the United Nations Secretariat of information from Governments on new developments in regard to the law and practice of capital punishment. Australia was a federal State and the laws and practice relating to capital punishment differed from state to state in the federation.

15. With regard to the draft resolution itself, his delegation considered that operative paragraph 1 (a) was of the utmost importance and that observance of

^{5/} See E/AC.7/SR.562.

^{6/} The amendments were subsequently circulated as document A/C.3/L.1554.

^{7/} Official Records of the Economic and Social Council, Forty-fourth Session, Supplement No. 4, chap. XVIII, resolution 16 (XXIV), annex.

the two principles enunciated in paragraph 1 (a) (i) and (ii) was essential to a just legal system. In Australia, death sentences were never carried out under any jurisdiction until all due process of law and petition had been exhausted. With regard to paragraph 1 (b), his delegation considered that the fixing of time-limits did not necessarily mean a strengthening of legal safeguards. An arbitrarily fixed time-limit might result in unnecessary suspense and mental anguish for a condemned person whose fate had already been decided in accordance with the law which obtained and with the conditions mentioned in operative paragraph 1 (a). In Australia it had always been the practice for higher courts to grant priority to the hearing and determination of appeals in capital cases on the ground of humanity and because the liberty of the subject was at stake. His delegation had no difficulty, however, in supporting an invitation to Governments to consider the fixing of time-limits.

16. As the draft resolution aimed, on the ground of humanity and in the interest of true justice, at strengthening the legal safeguards afforded to persons condemned to death, it merited the support of all delegations.

17. Mr. LI (China) expressed appreciation to the Economic and Social Council, the Commission on Human Rights and the *Ad Hoc* Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders on their efforts in the matter of capital punishment. The question was indeed a complex one, which related not only to the judicial systems and criminal laws of each country, but also to the social traditions and political situations in different parts of the world. For that reason, his delegation was glad to see that the draft resolution was couched only in general terms and dealt purely with the humanitarian aspects of the question, and it whole-heartedly supported it.

18. Mr. CRUCHO DE ALMEIDA (Portugal) said that the deliberations and report of the Consultative Group of experts were a most valuable contribution, because of the objectivity of the arguments and the Group's determination to move away from purely doctrinal ground and arrive at some practical proposals. Although it was unfortunate that Economic and Social Council resolution 1337 (XLIV) was drawn up in such general terms, the draft resolution still contained recommendations of educational value which would arouse the conscience of Governments and of world public opinion and which his delegation fully supported. On the other hand, the legal recommendations represented no progress, as procedural safeguards had been part of humanity's moral heritage since the French Revolution. Moreover, the concept of a time-limit needed to be spelt out more fully. The nature and the usefulness of the time-limit varied, according as it was a time-limit allowed to the condemned person so that he might make an appeal or a time-limit for the execution of the penalty once the final sentence had been passed. The former was part of normal procedure; the latter was justified only if the proceedings in the courts were considered arbitrary. In view of the inadequacies of the Council's resolution, he wanted to draw the attention of the Committee to the comments made by the experts at Geneva, to the effect

that the abolition of the death penalty did not seem to have any effect on the number of voluntary homicides, which had continued to increase in some countries and to decrease in others. The general impression given by the report was that the death penalty served no purpose, and he agreed with that view.

19. Portugal had made a very positive contribution in the matter. In 1967, on the occasion of the centenary of the abolition of the death penalty in Portugal, a symposium had been held at Coimbra, with participants from fifteen different countries. He hoped that the Committee would pay the greatest attention to the conclusions of the symposium, which had been submitted to the Consultative Group at Geneva. Briefly, those conclusions were as follows: the death penalty was not absolutely necessary in a civilized country; the deterrent effect attributed to it could be exerted by other kinds of punishment; the concept of retributive justice did not necessarily mean that crimes should be punishable by death; the death penalty could become an instrument of oppression; the death penalty could only be applied to offenders who were fully responsible for their actions; and the death penalty conflicted with the modern concept of justice and with the respect due to the human person. The symposium had therefore recommended that the death penalty should be abolished for all crimes, that death sentences should be commuted to other penalties, and that all States where the death penalty still existed should immediately declare it suspended.

20. Mr. SQUIRE (United States of America) paid tribute to the Swedish delegation for its role in the item on capital punishment. The United States delegation agreed with the basic objective of the draft resolution, namely, the abolition of capital punishment. More than seventy nations, and thirteen states of the United States, had now abolished the death penalty. The use of capital punishment by those states which had not abolished it and by the Federal Government was declining. There were many reasons for that trend. The moral question of the right of society to take a life was compounded by the possibility of error. Furthermore, capital punishment was not a deterrent to crime, and the administration of justice could be hampered and delayed when capital punishment was involved. The Commission established by President Johnson to study crime had reported that the death penalty hindered the administration of criminal justice. For example, a jury might be inclined to find a defendant not guilty for fear of making an irreversible mistake, rather than because of the weight of the evidence. Appeal procedures also led to long delays before the sentence was carried out or commuted. Capital punishment, in addition to being ineffective, was not necessary; an offender could be rehabilitated and could do productive work while in prison.

21. His delegation supported the draft resolution as a whole and all its specific terms; it was an important and constructive step towards the elimination of capital punishment. It resulted from two important studies by Ancel^{8/} and by Morris,^{9/} and had been thoroughly considered by the appropriate United Nations bodies. As the Attorney General of the United

^{8/} *Capital Punishment: Part I—Report, 1960; Part II—Developments, 1961 to 1965* (United Nations publication, Sales No.: E.67.IV.15).

States had said on 2 July 1968, there was no justification for the death penalty.

22. Mr. SANON (Upper Volta) said that his Government had studied the question of capital punishment from both humanitarian and legal standpoints and had concluded that it served no useful purpose. It could not, however, replace it by life imprisonment, because of the limited funds which could be allocated to prison administration. Nor, perhaps, should the deterrent value of capital punishment be totally denied. The Government of the Upper Volta had resolved the dilemma by allowing condemned persons to appeal, and the death penalty was applied only in quite exceptional cases. Since the establishment of the Republic of the Upper Volta, only one death sentence had been carried out.

23. He had been surprised at the Portuguese representative's statement, and suggested that the following sentence should be added to the conclusions of the Coimbra symposium: "The conclusions of the Coimbra symposium are applicable to African Territories."

24. With regard to the procedure adopted for the current debate, he noted that document A/7243 had been circulated only that afternoon, with the result that his delegation had not been able to study it. However, he had two remarks to make concerning the draft resolution submitted by the Economic and Social Council: in operative paragraph 1 (a) and (b), the wording "the most careful legal procedures" seemed unclear to him, and he suggested that it should be replaced by: "the most careful application of legal procedures". That was not a formal amendment, however. Secondly, he wished to propose formally that the phrase "with indication of the reasons therefor", in operative paragraph 2, should be deleted.^{2/}

25. Mr. SCHREIBER (Director, Division of Human Rights) said that the wording "the most careful legal procedures" in operative paragraph 1 (a) and (b) clearly expressed the idea which it was desired to convey; the English text agreed exactly with the French, which had already been examined by eminent French-speaking jurists. The word "offering" could perhaps be used instead of "and" before the words "the greatest possible safeguards" in sub-paragraph (a) and the words "offering the" before "safeguards" in sub-paragraph (b).

26. He felt that the Committee's attention should be drawn to paragraph 8 of section V of the report of the Consultative Group (A/7243, annex), which clarified the meaning of the terms appel and recours.

27. Mr. SENTURK (Turkey) thought it was appropriate that, in the International Year for Human Rights, the Third Committee should have begun its work for the session by discussing the question of capital punishment. He complimented the Swedish and Venezuelan delegations on having submitted a draft resolution on the subject, without adopting any position either for or against the death penalty. The Turkish Penal Code prescribed the death penalty only for very serious

crimes, such as attacks on the internal or external security of the State. Furthermore, appeal procedures were always available, and clemency, pardon or amnesty could be granted.

28. In view of the foregoing considerations, his delegation would support the draft resolution.

29. Mrs. CABRERA (Mexico) said that she too would support the draft resolution; the death penalty had been abolished in Mexico fifty years previously for ordinary-law crimes. It could now be imposed only for crimes of high treason in wartime, but appeals could still be made to the country's higher courts. Mexico subscribed to the view that crime was the fault of society as a whole, and that the improvement of social conditions was the only remedy.

30. Mr. CRUCHO DE ALMEIDA (Portugal), speaking in exercise of his right of reply, said that what was occurring in the Portuguese Territories in Africa was not executions, but fighting, and that death struck both sides indiscriminately.

31. Mr. SANON (Upper Volta) replied that that viewpoint would be justified only if the Portuguese were fighting on their own territory.

Organization of work

32. The CHAIRMAN said, in response to the representative of Upper Volta, that document A/C.3/L.1553 on the organization of work of the Committee would be revised to include the number of meetings to be devoted to each agenda item.^{10/} He explained, in reply to a question put by the representative of the United Arab Republic, that of the seventy-seven meetings which the Committee was scheduled to hold only seventy-five had been allotted to the various agenda items, thus leaving two meetings free to be used as required. He added, in reply to an objection by the representative of Costa Rica, that the number of meetings allotted to each item was merely a guide which could be changed, if necessary.

33. Mr. PAOLINI (France) said he thought that the two meetings allotted to item 59 might not be sufficient. He therefore requested that a vote should not necessarily be taken at the end of the second meeting, particularly as document A/7243 had been circulated during the afternoon and some delegations would wish to consult their Governments regarding the report of the Consultative Group.

34. Mr. ARTAZA (Chile) agreed, and requested that the next meeting should not be held until the following afternoon, in order to give delegations time for the required consultations.

35. The CHAIRMAN agreed to that suggestion, and stated that the deadline for the submission of amendments to the draft resolution submitted by the Economic and Social Council (A/7243, para. 11) would be 11 a.m. on 3 October.

The meeting rose at 5.15 p.m.

^{2/} The amendment was subsequently circulated as document A/C.3/L.1555.

^{10/} Subsequently circulated as document A/C.3/L.1553/Rev.1.