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INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Elaboration of a second optional protocol to the International  
Covenant on Civil and Political Rights, aiming at the  
abolition of the death penalty

Report of the Secretary-General containing views expressed  
by Governments pursuant to Commission on Human Rights  
resolution 1989/25 of 6 March 1989

Addendum

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AUSTRIA

[Original: English]

[3 October 1989]

1. The Government of Austria welcomes the decision of the Commission on Human Rights to transmit to the General Assembly the draft second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty together with the comparative analysis of the Special Rapporteur.
2. Austria considers the death penalty a violation of the most fundamental of human rights, the right to life, as contained in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights. Austria also supports the view that the intention of article 6 of the Covenant clearly was to encourage countries to abolish capital punishment and to place serious limitations on the application of the death penalty in those countries which so far have not abolished it.
3. Capital punishment was first abolished in Austria some 200 years ago, and again in 1920. It was reintroduced twice and has now been abolished for 40 years. In this long tradition, it appears that during the periods with the death penalty the latter had no significant deterrent effect and that its abolition did not lead to an increase of "capital crimes".
4. Austria was also one of the first countries to ratify Protocol No. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty, which was an important step in the process of expanding international human rights on the European plan and which by now has been ratified by 14 member States of the Council of Europe.
5. The Government of Austria concurs with the conclusions of the Special Rapporteur, in particular the one in paragraph 186 of his report, that there does not seem to be a valid reason why States not yet in a position to abolish capital punishment should oppose the initiative of those States desirous to accept abolition as an international commitment, since the proposed optional protocol would not compel them to follow suit.
6. The draft optional protocol has been endorsed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the Economic and Social Council. In view of this wide international acceptance, it would now be appropriate for the General Assembly at its forthcoming session to adopt the optional protocol and to open it for signature, ratification and accession.

CZECHOSLOVAKIA

[Original: English]

[27 September 1989]

1. In the Czechoslovak Socialist Republic the death penalty has become very exceptional. It is imposed for criminal offences that result in the death of persons and have been committed in a particularly contemptible manner. Throughout the last three decades this exceptional penalty has been imposed only for murder or for other criminal offences that involve the slaying of a person. In the last decade an average of two to three offenders a year have been condemned to death from the total of 125 perpetrators of the criminal offence of murder in the same period. From the thus imposed penalties one to two executions are performed in a year in those cases where there is no guarantee that the offender is correctible or that his isolation would meet the purpose of society's protection, taking into account the manner and the motive of the murder.
2. In keeping with the requirement embodied in paragraph 6 of article 6 of the International Covenant on Civil and Political Rights, political and legislative measures are being adopted, on the basis of which the possibilities of imposing the death penalty are gradually being limited in the Czechoslovak Socialist Republic and the conditions are made stricter for the execution of the death penalty. In this respect the Czechoslovak practice is fully in keeping with the conclusions of the General Assembly and the documents adopted in this area by United Nations Congresses on the Prevention of Crime and the Treatment of Offenders.
3. Every death penalty imposed is re-examined by the Supreme Court of the Republic, then by the Supreme Court of the Federation. After the imposition of the death penalty has been confirmed, the case is submitted to the Office of the President to weigh the possibility of a pardon by the President. The tendency towards further gradual limitation of this penalty has been reflected also during the consideration of amendments to the Penal Code in the respective bodies of the Federal Assembly of the Czechoslovak Socialist Republic.
4. Despite the fact that the death penalty is considered undesirable in Czechoslovakia, for the time being the conditions do not prevail for its complete abolition. However, it can be stated that the trend is towards total abolition.
5. In the view of the Czechoslovak Socialist Republic there are no grounds for opposing the draft second optional protocol to the International Covenant on Civil and Political Rights, the significance of which it sees in the fact that this document will constitute a certain form of pressure on those countries which use the death penalty in a manner that is not in keeping with the generally recognized norms and will represent a beginning of the abolition of this penalty altogether.
6. The Czechoslovak Socialist Republic fully supports the noble objectives pursued by the proposed optional protocol. It is gradually creating internal prerequisites to be able to accede to it in the future and to fulfil honestly the commitments resulting from it.

INDONESIA

[Original: English]

[9 October 1989]

1. In Indonesia the death penalty is still retained, de jure and de facto, based on the provisions of the Criminal Code, notably articles 340 and 104; as well as the provisions of other legislation, particularly Law No. 11/PNPS of 1963 concerning anti-subversion, and Law No. 9 of 1976 concerning narcotics.
2. The application of severe penalties, including the death penalty, takes into account the nature of the crimes committed, which are grouped into:
  - (a) Serious criminal offences against the interests of society;
  - (b) Criminal offences against the interests of the State.
3. Even though the death penalty is formulated into laws and regulations and is applied in practice, its implementation, however, is carried out selectively, based on juridical considerations. For example, article 56 of the Code of Criminal Procedure states that at every stage of adjudication, the judge or Prosecutor shall be obligated to assign a defence counsel to those accused of crimes punishable by death. The law also provides an opportunity for the convicted person to request reconsideration of the death sentence, through the judicial process of appeal, namely, the first appeal as provided for in article 67 of the Code of Criminal Procedure, and the second appeal (cassation), pursuant to article 244 of the Code of Criminal Procedure.
4. Besides the legal remedies as contained in the Code of Criminal Procedure, other remedial measures are also provided for, such as in Law No. 3 of 1950 where those under the sentence of death may petition for clemency to the President. The granting of clemency is accorded without any juridical consideration. Should it be granted it may change and reduce the sentence.
5. In the event that the convicted person or his/her defence counsel do not request clemency, then the officials (prosecutor) involved in sentencing the death penalty may, *ex officio*, do so in the interest of the convicted person. Thus, even though the death penalty is, de jure and de facto, still implemented in Indonesia it is not, however, carried out indiscriminately but selectively, after thorough consideration of the juridical and non-juridical aspects of the offence committed.

MEXICO

[Original: Spanish]

[14 September 1989]

1. The right to life is enshrined in Mexican law. The norms, in particular, of criminal law do not permit the imposition of capital punishment for any offence.
2. In its unqualified defence of the right to life, Mexico believes that the imposition of the death penalty not only violates this right, but does not produce any positive effect by lowering the crime rate.
3. Thus, the Government of Mexico recommends the adoption of the draft second optional protocol to the International Covenant on Civil and Political Rights by means of which the legal philosophy upholding the defence, protection and safeguarding of human rights and fundamental freedoms would be strengthened.

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