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President: Mr. Alfonso PATIÑO (Colombia).

Present:

Representatives of the following States: Argentina, Australia, Austria, Colombia, Czechoslovakia, El Salvador, Ethiopia, France, India, Italy, Japan, Jordan, Senegal, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Yugoslavia.

Observers for the following Member States: Albania, Algeria, Brazil, Bulgaria, Canada, Chile, Denmark, Hungary, Indonesia, Israel, Netherlands, New Zealand, Norway.

Representatives of the following specialized agencies: International Labour Organisation; Food and Agriculture Organization of the United Nations; United Nations Educational, Scientific and Cultural Organization; World Health Organization.

The representative of the International Atomic Energy Agency.

AGENDA ITEM 11

Capital punishment (E/3724, E/L.986)

1. Mr. MATSCH (Austria) said that the question of capital punishment had aroused a great deal of controversy not only among specialists but among the entire population. Austria had given particular attention to the problem over a long period. Capital punishment had been abolished by the Code of 1787, but had been reintroduced in 1795 for cases of high treason, and in 1803 for other serious crimes. It had been abolished again in 1919 and reintroduced once more in 1934. However, in 1950 the Austrian Parliament had reversed that decision. The many changes of policy showed Austria's deep preoccupation with the problem.

2. Austria's concern with the subject had prompted it to co-sponsor a proposal that the Economic and Social Council should initiate a study of the question; that proposal had been adopted by the General Assembly as resolution 1396 (XIV). In its resolution 747 (XXIX), the Council had requested the Secretary-General to prepare a factual review of the various aspects of the question referred to in General Assembly resolution 1396 (XIV). A study had been carried out by Mr. Marc Ancel, an appellate judge in the Court of Cassation and director of the criminal science section of the Institute of Comparative Law of Paris, and it was now before the Council.^{1/} The Council also

had before it the recommendations of the *ad hoc* Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders (E/3724, para. 5).

3. The Council was in a position to take further action. The Austrian and Italian delegations had therefore decided to submit a draft resolution (E/L.986), operative paragraph 1 of which expressed appreciation of the excellent study carried out by Mr. Ancel. Paragraph 2 was based on paragraph 33 of the report of the *ad hoc* Advisory Committee of Experts (E/CN.5/371), but sub-paragraph (e) was new. Paragraph 3 requested action by the Secretary-General on the information received from Governments under sub-paragraph 2 (e). He hoped that the text would command wide support; the sponsors were willing to accept any amendments that would improve it.

4. Mr. FRANZI (Italy) said that the *ad hoc* Advisory Committee of Experts and Mr. Ancel were to be congratulated on the excellent work that they had done. It would be difficult to find arguments in favour of the abolition of capital punishment which were not already set forth in paragraphs 221 to 238 of Mr. Ancel's study.

5. Italy was one of the twenty-one countries which had abolished capital punishment, not once but twice. No death penalty had been provided for in the Italian Penal Code of 1889, but it had been introduced in 1931 by a legislative decree. It had again been abolished thirteen years later and had been included in the Italian Constitution, article 27 of which provided that there should be no capital punishment except in the cases covered by military law, and that penalties could not be inhuman and must aim at the rehabilitation of the convicted person. Thus, Italy was opposed to capital punishment, firstly on moral grounds, secondly, because the aim of any penalty was the rehabilitation of the condemned person, and, thirdly, because there was no increase in criminality following the abolition of the death penalty. Italy's experience before 1931 and after 1944 fully confirmed the conclusions on the latter point set out by Mr. Ancel in paragraphs 196 to 199 of his study. Governments should not combat crime by capital punishment but by applying sound legal procedures, improving education and carrying out social measures.

6. His delegation did not wish to bring pressure to bear on other delegations, but it wished to point out that modern criminology emphasized society's responsibility for the rehabilitation of delinquents rather than their punishment. There was a general tendency in all parts of the world to reduce the number of crimes punishable by death. For that reason, the draft resolution (E/L.986) merely urged Governments which still applied the death penalty to study the matter with a view to reducing the number of cases in which it could be applied and to abolishing it eventually if possible. Furthermore, the sponsors did not wish the work done by the United Nations to be forgotten and they hoped that the countries which had not yet

^{1/} *Capital punishment* (United Nations publication, Sales No.: 62.IV.2).

replied to the Secretariat's questionnaire would do so. He associated himself with the Austrian representative's remarks regarding the basis of the draft resolution and the sponsors' willingness to accept amendments.

7. Mr. ATTLEE (United Kingdom) said that most people agreed that very careful consideration should be given to capital punishment, which had been given very careful attention in his country. In the United Kingdom, it was believed that "capital murder" merited the punishment of death, and the Government was not in favour of changing the law at the present time. The United Kingdom view was that, given adequate safeguards against the miscarriage of justice, the ultimate penalty for and deterrent against certain crimes should be the death penalty. There was always the possibility of exercising clemency, which was frequently done.

8. Most valuable work on capital punishment had been done by the United Nations. Mr. Ancel was to be congratulated on the excellent factual study which he had prepared. Owing to the fact that his Government's reply had been sent in somewhat late, there were a few inaccuracies as regards law and practice in the United Kingdom. For instance, in paragraph 169 of the study, it was stated that the interval between sentence and execution in the United Kingdom was eighteen to twenty-five days, which was not correct. In fact, the average interval in 1960 had been about nine weeks.

9. His Government had taken full note of the recommendations made by the Advisory Committee of Experts (E/3724, para. 5). He was sure that, when any change in the law was contemplated in the United Kingdom, due account would be taken of both those recommendations and of Mr. Ancel's excellent study.

10. Although capital punishment was a matter of international concern, it must be for individual Governments to decide, in the light of circumstances and conviction in their own country, what their law and their attitude towards the matter should be. He did not feel that a universal criterion was either possible or desirable. His delegation was grateful for the research which had been done and was convinced that it would be of value to Governments in deciding what their position should be. It was grateful to Mr. Ancel and to the Advisory Committee of Experts, but it did not feel that it was necessary for the Council to adopt a resolution, or to burden the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders with the matter at the present time. In addition, it felt that no useful purpose would be served by imposing on over-worked Government departments the work of conducting further studies for the time being. For those reasons, although his delegation was not opposed to the draft resolution (E/L.986) in principle, it would be unable to vote for it.

11. Mr. BINGHAM (United States of America) congratulated the Secretary-General and his staff, the ad hoc Advisory Committee of Experts and Mr. Ancel on the excellent work they had done.

12. Capital punishment raised the moral issue of whether man, organized into society, had the right to take the life of man as an individual. The pragmatic question of whether capital punishment was an effective deterrent was still being hotly debated in many countries and would no doubt continue to be debated for

many years to come, but the long-term trend seemed to be away from capital punishment. That conclusion had been reached by the ad hoc Advisory Committee of Experts in paragraph 17 of its report (E/CN.5/371).

13. The United States had been no exception to the trend away from capital punishment. The two hundred crimes which had been punishable by death when the United States had become independent had quickly been reduced to a very few. That reduction had continued and in 1961 there had been only forty-two executions in the United States as compared with 199 in 1935. The Legislature of New York State had recently passed a bill making the death sentence no longer mandatory, even in cases of first-degree murder.

14. The statement of the ad hoc Advisory Committee of Experts in sub-paragraph 17 (1) of its report (E/CN.5/371) that there was a trend to limit categories of offences for which capital punishment was imposed should perhaps have been qualified; although in most parts of the world the practice of punishing economic crimes by death had been abandoned more than a century ago, that practice had regrettably been reintroduced in some countries within the last two years.

15. His delegation had noted with interest the proposals made by the ad hoc Advisory Committee of Experts and embodied in the draft resolution submitted by Austria and Italy (E/L.986). The proposals seemed rather modest. Some delegations would have been willing to support more substantive recommendations, for example, that there should be no capital punishment for crimes of a purely economic character. However, he felt that there could be no real objection to the draft resolution, which, he trusted, would be adopted unanimously.

16. Mr. MELOVSKI (Yugoslavia) said that his delegation had carefully studied the two documents before the Council but wished to comment only on a few particular points. It was clear from those documents that the controversy regarding capital punishment was still raging.

17. Mr. Ancel's study^{2/} showed that the practice of Governments in that respect varied greatly. The conclusions which he had drawn from the replies to the questionnaire were roughly the same as those of the ad hoc Advisory Committee of Experts. Firstly, the general trend was not to make capital punishment mandatory and to provide alternative penalties. In many countries, there was no death penalty except for certain special crimes or under certain special jurisdictions. Secondly, according to all the available information, the abolition or suspension of the death penalty did not lead to a substantial increase in criminality, but opinions were divided about the deterrent effect of capital punishment. Many countries had abolished the death penalty, but there had always been a fair number of cases where it had been restored for certain particularly horrible crimes or because of special political circumstances. The overall conclusion which emerged from a study of the two documents was that, although there was a definite trend away from capital punishment, many States and a considerable cross-section of public opinion were still in favour of its retention.

18. Yugoslav penal law was based on up-to-date ideas about punishment in general. Penalties were considered as measures either for the prevention of

^{2/} Ibid.

crime or for the rehabilitation of the offender. The main purpose was to make the latter understand his obligation, which, moreover, was a mutual obligation, to respect the generally accepted standards of conduct towards the State, society and his fellow men. However, the death penalty had been retained as the ultimate punishment—in order to serve as a deterrent—and as a social sanction, but only for certain categories of very serious crimes, such as crimes against the people and the State, crimes against international law and humanity, and murder. However, even in the cases he had mentioned, the death penalty was never mandatory and could always be replaced by a severe prison term. Furthermore, as Mr. Ancel mentioned in his study, there was a trend in Yugoslavia to reduce the number of crimes for which the death penalty could be imposed.

19. The Council must consider what action it should now take; its position should, above all, be practical, should take account of the existing situation and should not be concerned with the philosophical side of the problem only. The suggestions made by the ad hoc Advisory Committee of Experts seemed to meet that criterion. His delegation therefore supported the draft resolution (E/L.986).

20. Mr. PICO (Argentina) said that chapter I of Mr. Ancel's study of capital punishment gave a careful and scientific summary of the legal problems involved. The practical problems were similarly dealt with in chapter II; more statistical data of the kind reported in section B would have been welcome. Chapter III had clearly been the most difficult to compile; such questions as the effects of the death penalty and the importance attached to it by public opinion were not exhaustively treated and he regretted that there was no mention, for instance, of the differences between penal systems based on different fundamental concepts.

21. Paragraphs 196–199, which dealt with the abolition of the death penalty and with the criminality curve, indicated a definite trend towards abolition, impeded only by the emergence, in the first half of the twentieth century, of authoritarian régimes. The legal abolition of capital punishment in Argentina in 1922 had been preceded by many years of de facto abolition; even during the colonial period, the death penalty had seldom been applied, and throughout the succeeding years both the courts themselves and public opinion had often felt that the sentence should not be imposed, even where sanctioned by law—an indication that the law should always be adapted to the needs and the prevailing outlook of the country concerned. In 1922, the legislators had carefully weighed the arguments for and against capital punishment and had decided that it was the certainty, and not the severity, of punishment which acted as a deterrent; the statistics quoted in paragraph 198 of the study appeared to show that they had been right, at least in the case of Argentina. His delegation would support the draft resolution.

22. Mr. MATSUI (Japan) observed that the study of capital punishment contained most valuable and interesting information and that the note by the Secretary-General (E/3724) was also most useful and instructive. His Government had no objection, in principle, to the proposals for action by the Council set out in paragraph 33 of the report of the ad hoc Advisory Committee of Experts (E/CN.5/371).

23. In Japan, there were thirteen categories of offences for which the death penalty could be imposed,

but it was mandatory only in the case of conspiracy with a foreign State leading to the use of armed force against Japan—paragraph 17 of Mr. Ancel's study was not entirely accurate in that respect—and in all other cases, imposition of the death penalty was at the discretion of the court. Abolition had been seriously discussed in Japan since the beginning of the century, but a bill to amend the law had been rejected in 1956. Public opinion regarded total abolition as premature at the present stage, but it was considered desirable that, as suggested by the ad hoc Advisory Committee of Experts, the Government should review the types of crime to which capital punishment was in fact applied and should endeavour to remove that punishment from the criminal law in respect of any crime to which it was in fact neither applied nor intended to be applied.

24. Although it was very difficult, because of the differences in legal systems and practice, to adopt recommendations for uniform measures, it was desirable from the humanitarian point of view that each country should take gradual steps to limit capital punishment in law and in practice, taking its national circumstances into consideration. In view of the importance of the matter, Governments of Member States and non-governmental organizations should give careful study to the two documents before the Council and should inform the Secretary-General of their comments and of new developments in law and practice as a basis for further study. In the light of the foregoing, his delegation supported the draft resolution.

25. Mr. BAYONA (Colombia) said that the study of capital punishment and the discussions and recommendations of the ad hoc Advisory Committee of Experts were admirably objective, in that they approached the question in the light of modern practice and its effect on penal codes, rather than in the philosophical spirit in which the subject of capital punishment had been debated for centuries past. The death penalty had been abolished in Colombia, and the documents before the Committee indicated a definite trend in that direction throughout the world. The statement, in paragraph 192 of the study, that "the information assembled confirms . . . that the abolition . . . of the death penalty does not have the immediate effect of appreciably increasing the incidence of crime" appeared to demolish the principal argument in favour of capital punishment, namely, that it served to protect society. Sociological studies had already shown that such factors as environmental influences and the personality of the offender were largely responsible for the commission of capital crimes, and the retention or abolition of the death penalty should be decided solely in the light of the principles of modern science. His delegation fully agreed with the recommendation of the ad hoc Advisory Committee of Experts, in paragraph 33 (a) of its report (E/CN.5/371), that Governments should be urged to conduct research into the efficacy of capital punishment as a deterrent to crime in their country, since it would be deplorable, to say the least, for countries which regarded the death penalty as an effective means of protecting society to continue to impose it, if it was found to have no deterrent effect.

26. He regretted that the documents before the Council did not deal with the position in military courts. His feelings on the matter were not influenced by political considerations, but purely by concern to defend human

rights. If the Council failed to consider military courts, it would not be complying fully with the terms of General Assembly resolution 1396 (XIV). Consequently, while the draft resolution was fully in accord with the recommendations of the *ad hoc* Advisory Committee of Experts, he hoped that the sponsors would consider the possibility of adding a paragraph calling upon the Secretary-General to take the necessary steps to implement resolution 1396 (XIV) to the full. It would also be desirable to request Governments of countries where the death penalty was still applied to transmit information on all crimes punishable by death, since the list of capital crimes in table I of Mr. Ancel's study was incomplete, or had not been supplied at all, in the case of some countries.

27. Mr. ANJARIA (India) pointed out that mankind's views on individual motivation and the environmental causes of crime had been developing rapidly, and he noted with satisfaction the growth of a new scientific and humanitarian approach. As his delegation had made clear on previous occasions, India believed that the time had not yet come for the United Nations to make definitive recommendations for any changes in national law, but it was important to continue to study the various aspects of the problem. The Indian Government had already appointed a law commission, which was considering capital punishment along with other matters. So far as safeguarding the rights of the accused was concerned, it was felt that Indian law and procedure were entirely adequate.

28. His delegation had no difficulty in supporting the draft resolution. However, some Governments would not find it easy to conduct the research called for in operative paragraph 2 (a) unless they could obtain financial, or even technical, assistance from the United Nations. He suggested, therefore, that the words "to conduct research" should be replaced by "to keep under review and to conduct research where necessary, with United Nations assistance".

29. Mr. WODAJO (Ethiopia) felt that, while the documents before the Council represented an important step in the study of capital punishment, a great deal more information was needed before the Council, or any other United Nations organ, would be in a position to make definitive recommendations involving value judgements. If it was conceded that the general purpose of criminal law was to deter further crimes and to give the offender an opportunity to reform and become a useful member of society, capital punishment must nevertheless be examined in each country in the light of prevailing social, cultural and psychological circumstances; it might be found to be an effective deterrent in some societies, but not in others. The Ethiopian Penal Code prescribed the death sentence for collaboration with a foreign Power, premeditated murder, and armed robbery with intent to commit murder, and while he could not prejudge future developments, he could state that neither the Parliament nor the Ministry of Justice was at present contemplating any change in the law. However, Ethiopia would like to learn from the experience of other States, and in that spirit his delegation would support the draft resolution (E/L.986), the principal objective of which was to initiate further studies.

30. Mr. OSTROVSKI (Union of Soviet Socialist Republics) said that the efforts being made within the United Nations to study capital punishment deserved commendation and should be continued. One of the basic aims of the Charter had been to reaffirm faith in the

dignity and worth of the human person. He hoped that in dealing with the present topic, all delegations would be imbued with the same aim of preserving human life and hence of reducing the number of executions. In doing so, they would be reflecting the current trend in world public opinion.

31. The recommendations made by the *ad hoc* Advisory Committee of Experts (E/3724, para. 5) were valuable, especially those concerning paragraphs 18, 25 and 30 of Mr. Ancel's study. The experts had rightly stressed that the death sentence should be passed only in exceptional cases and should be limited to strictly defined categories of offences. Mr. Ancel's study of capital punishment was also useful but it was formalistic, restricted and abstract. It was not enough merely to describe existing legislation; the over-all implications and the general background of capital punishment must also be studied. Above all, the situation in the various countries must be examined. In the Soviet Union, capital punishment had always been and was still regarded as an exceptional and temporary measure which was applied only to specific crimes. The general aim was not so much to punish offenders as to eliminate the crime itself and rehabilitate the criminal.

32. The United States representative had stated that the death penalty should not be applied for economic crimes. His advice was quite uncalled for. It was up to each State to define what crimes should carry the death penalty. Why was the United States representative so worried about the few cases of economic crime in the Soviet Union? Why was he not more worried about the numerous cases in the United States of people being sentenced to death merely because of their colour? Why was he not more concerned about the massive loss of life which colonialism had entailed? Why was he not more concerned about the weapons being supplied to certain countries in order to help them maintain their colonial domination? Surely, the Council's function was to reduce the number of people being sentenced to death and not to offer gratuitous advice to individual countries as to how to draw up their own legislation.

33. Mr. Ancel's study of capital punishment mentioned Portugal as one of the countries in which the death penalty had been abolished. But such abolition was completely meaningless when it was remembered that the Portuguese had wiped out whole villages and killed men, women and children in order to cling to their colonial possessions. The economic crimes for which the death penalty was prescribed in the Soviet Union were very limited. In a letter addressed to Bertrand Russell, Mr. Khrushchev had explained that ever since the Soviet régime had been instituted, the severest punishment had been meted out for crimes against the economic structure of the State. The laws in question were understood and endorsed by the Soviet people and reflected the new socialist morality. Whereas in the United States the amassing of great wealth, often by criminal means, was a subject for congratulation, in the Soviet Union thievery and speculation were considered serious offences.

34. Bertrand Russell had also addressed a letter to the United Nations protesting against the inhuman treatment still being meted out to political prisoners in Greece who had been in captivity for seventeen years. Originally, their crime had been to resist Hitlerism, but they were being kept in jail merely because their views did not coincide with those of

the Greek Government. It was curious that the United States representative was not concerned about that crime against mankind.

35. The draft resolution (E/L.986) was a step in the right direction. Its main aim was to keep capital punishment under continuous review. Although both legislation and practice varied from country to country, the text represented common ground in pursuing the general aim of the limitation and eventual abolition of capital punishment. Since that was the clearly acknowledged policy of the Soviet Union, his delegation supported the draft resolution, apart from minor drafting changes.

36. Mr. COMBAL (France) appreciated the study made by Mr. Ancel, but felt, as a matter of principle, that the topic came within the exclusive competence of individual Member States. The motives of the sponsors of the draft resolution (E/L.986) were laudable but certain passages in the text ran counter to that principle.

37. Mr. PASTORI (Uruguay) congratulated Mr. Ancel on his study, as well as the Secretary-General. In his own view, and in accordance with what he had already said concerning demographic policy, the solution to the problem of capital punishment should be considered as coming within the competence of each State.

38. The moral, legal and pragmatic difficulties arising from the problem of capital punishment were so complex that for the moment there was no single solution. His delegation, while deeply respecting the opinions of others, wished, in accordance with the abolitionist policy followed by his country's Government since the beginning of the century, to stress once again its opposition to capital punishment from a general standpoint.

39. The policy followed by his country in that regard was but a further reflection of its pacifism vis-à-vis

both individuals and States, a pacifism which had resulted in the conviction that all international problems should be solved by arbitration.

40. He agreed with the Colombian representative that the failure both of Mr. Ancel and of the ad hoc Advisory Committee of Experts to deal with capital punishment as applied by military courts was a serious omission. He proposed that an additional sub-paragraph should be inserted between operative paragraph 2 (b) and (c) of the draft resolution requesting an amplification of the studies which had been made to include the different attitudes of civil and military courts to capital punishment.

41. Mr. BINGHAM (United States of America) expressed surprise that the USSR representative had indulged in such a lengthy attack upon the United States when he himself had mentioned economic crimes only briefly and without any mention of the Soviet Union. Obviously, he had touched upon a sensitive nerve. The remarks made by the USSR representative about colonialism were of course quite irrelevant. But it should be made clear that the letter which Mr. Khrushchev had sent in reply to Bertrand Russell began by mentioning the concern felt by Bertrand Russell about the anti-Semitic aspects of the application of the death penalty for economic crimes in the Soviet Union.

42. Mr. OSTROVSKI (Union of Soviet Socialist Republics) replied that his country was indeed sensitive to outside interference and resented advice being given to it about its own affairs. It was somewhat unfortunate that the United States representative had mentioned only the beginning of Mr. Khrushchev's reply to Bertrand Russell. If he had continued the quotation, it would have been quite apparent that Mr. Khrushchev had conclusively disproved the charge of anti-Semitism levelled against the Soviet Union.

The meeting rose at 1.10 p.m.