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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

Addendum

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SUMMARY OF REPLIES RECEIVED FROM GOVERNMENTS

BARBADOS

[Original: English]

[19 May 1982]

1. The laws of Barbados provide for capital punishment. Barbados is therefore not yet ready to ratify the protocol. The death sentence is very rarely carried out in Barbados. Apart from treason at common law, for which there has not been a prosecution since independence, sentence of death is only passed for murder. But, even then, it is commuted for a lesser sentence in the majority of cases and in practice is only carried out in the extreme case of murder, and where no mitigating circumstances are present.

2. Professor Howard Jones of the University of Cardiff, Wales, came to Barbados in 1979 under technical assistance to advise the Government on measures required to bring the penal system of the country into line with current thinking. In his report, which has since been published, Professor Jones stated as follows:

"The death penalty should be abolished, unless it is felt that moral feeling in Barbados is so strong that it justified ignoring both the rational case against it and the abolitionist trends in most countries of the world."

3. A Committee on Penal Reform in Barbados was set up following the submission of Professor Jones' report. One of the terms of reference of the Committee was "to consider the future role of the corporal and capital punishment in the Barbados Penal System". The Committee was, however, unable to reach a consensus which could have been submitted as a formal recommendation. Its report stated that it was generally felt among members that, because of the controversial nature of the subject, the proper forum to debate and reach a conclusion on the issue would be Parliament. No decision has therefore been made as yet with regard to the abolition of the death penalty in Barbados.

DOMINICAN REPUBLIC

[Original: Spanish]

[13 May 1982]

1. The Dominican Republic has been advocating the abolition of the death penalty for many years in the conviction that the concept is prejudicial to the structure of human rights.

2. Indeed, at the thirty-sixth session of the General Assembly, the Dominican Republic reaffirmed the position it took when it signed the American Convention on Human Rights (Pacto de San José de Costa Rica) in these terms:

"In signing the American Convention on Human Rights, the Dominican Republic trusts that the principle of abolishing capital punishment will come to be applied by all American States without dilution. It maintains the views expressed in the observations and comments which it made concerning the draft of the above-mentioned Convention ..."

The Convention would also eliminate the double standard under which capital punishment is prohibited but countries where it was in force on the date of the signing of the Convention can continue to impose it.

3. We draw attention to article 4, paragraph 3, of the above-mentioned Convention, which states as follows: "The death penalty shall not be re-established in States that have abolished it."

ECUADOR

[Original: Spanish]

[19 May 1982]

1. The draft, which is designed to prohibit capital punishment at the international level, is in complete conformity with Ecuadorian tradition and rules of law regarding this important subject. Ecuadorian law provides that every human being has the inherent right to life, therefore, no one may be sentenced to death, since he is protected by the constitutional guarantee that the right to life is inviolable.

2. The following wording is suggested as a possible improvement to article 1 of the Draft Second Optional Protocol to the International Covenant on Civil and Political Rights, as it appears on page 12 of the English text of document A/35/742:

"Each State Party shall abolish the death penalty in its territory and shall no longer foresee the use of it, nor impose nor execute it, against any individual subject to its jurisdiction."

LUXEMBOURG

[Original: French]

[24 May 1982]

Capital punishment was abolished in Luxembourg by the Act of 20 June 1979, which reads as follows:

"Article 1. The death penalty shall be abolished for all offences and replaced by the next lowest penalty until such time as it is governed by a new Act.

"Article 2. Article 7 of the Penal Code shall be replaced by the following:

/...

'Article 7. The penalties applicable to offences are:

In criminal matters:

- (1) Forced labour;
- (2) Imprisonment;
- (3) Rigorous imprisonment;
- (4) Deprivation of titles, grades, functions, and public posts and offices.

In correctional and police-court matters:

Imprisonment.

In criminal and correctional matters:

Deprivation of certain political and civil rights:

Placement under special police surveillance.

In criminal, correctional and police-court matters:

1. Fine;
2. Special forfeiture."

PHILIPPINES

[Original: English]

[24 May 1982]

1. The Philippines has 24 crimes in its statute books punishable by the death penalty (8 from the Revised Penal Code and 16 from special laws: CA 616 - Espionage Act; RA 1700 - Anti-Subversion Law; RA 6235 - Anti-Hijacking Law; RA 6539 - Anti-Carnapping Law, PD 533 or Anti-Cattle-Rustling Law; PD 532 - Anti-Piracy and Anti-Highway Robbery Law; PD 534 - Illegal Fishing Law; RS 6425 - Dangerous Drugs Act; and PD 1683 - Regulated Drugs Law) ranging from treason, espionage, to violent crimes of murder, parricide, infanticide, to non-violent crimes on the importation, manufacture and sale of dangerous drugs. As of 30 June 1979, when the Director of the Bureau of Prisons appeared before the Laurel Committee hearings on the proposed Parliamentary Bill 543 to abolish the death penalty, he declared that 814 prisoners had been sentenced to death, of which 39 had cases already reviewed by the Supreme Court and only 16 had their death sentence affirmed. Since 1972, only one convict had been executed, as the President granted a reprieve for the others.

2. The controversy among nations is the abolition or retention of capital punishment. The Philippines is still for the retention of death penalty. It is the contention of the abolitionists that a considerable amount of research in the United States and European countries shows that the death penalty has no deterrent effect on the commission of capital crimes. But the available data failed to prove points on deterrence more significant than the mere existence of legislation providing for capital punishment with higher rates of homicide compared with those States without capital punishment but with lower homicide rates. To secure anything like a definitive answer to the narrow question of relative deterrence requires a number of related variables that must be held constant, such as the differentials in age, social class, ethnic background, community size, season, and the type of capital offenses, among others, and this has not been done. The statistics used leave much to be desired for lack of accurate comparability of the aforementioned factors and the capital crimes as defined by the laws of the States compared.

3. The data employed in these research comparisons of jurisdictions with or without death-penalty legislations and their homicide rates also failed to focus on the frequency with which the death sentence was actually carried out. They become highly questionable, at least in the United States, considering that, for the last 10 years, those states where capital punishment continues to be legally permissible have not imposed the death penalty or carried out the punishment which, for practical purposes, has all but ceased to exist. Neither did the researchers prove that life imprisonment as an option to the death penalty has a greater deterrent value, but, to abolitionists, deterrence can readily be dropped as a reason shifting their values for the concern for human life as a favourable position. It is precisely because the retentionist places a higher value on the life of the innocent victim than upon that of the convict that the death penalty must exist as a form of crime prevention and protection of society. Altogether, there is no evidence that shows that the death penalty is not a deterrent.

4. The foremost argument given by the abolitionist is the irrevocability of the death penalty, hence no rehabilitation is possible. The awful finality of the death penalty poses a problem only when there is a miscarriage of justice. The mandatory automatic review of the criminal case by the Supreme Court of the Philippines and the length of time before the sentence is actually executed to discover new evidence are safeguards to preclude such miscarriage. Moreover, with today's well-trained, efficient and dedicated police with scientific equipment, it is a rarity for a person to be wrongfully convicted of a crime. But, if a miscarriage of justice can still possibly occur despite the substantive and procedural safeguards of criminal procedure and evidence, and the mandatory review by the highest tribunal of the land, as in the Philippines, then the problem lies in the judicial system and not in the death penalty.

5. The humanist academicians can argue that capital punishment even by its modern and painless method and standard is still inhumane. But are not the crimes committed by which the law provides this sanction far more inhumane? Is murder with its attendant brutalizing effect not justifying capital punishment? The abolitionists condemn this retributive theory of justice. We could counter that more than retribution is society's desire for justice, law and order in its

emphatic disownment of heinous crime, and this is where the intrinsic fairness of capital punishment lies more than all ethical scruples. Thus, the value of human life in society is not lessened but protected by the retention of the death penalty.

PORTUGAL

[Original: English]

[10 June 1982]

1. Portugal is a co-sponsor of the draft resolution. In Portugal, capital punishment was abolished in 1867, a measure reinforced by the 1976 Constitution which states that "human life shall be inviolable" and that "in no case shall the death penalty be applicable". Thus, it is possible for Portugal to affirm that the elimination of this form of punishment has not in any way hindered the development of Portuguese society. In this respect, it should also be noted that crime statistics in many countries prove that the abolition of the death penalty has not had any negative impact on the crime rate of offences punishable by death.

2. The elaboration of an international instrument on the abolition of the death penalty would further develop other human rights instruments of the United Nations that already have provisions relating to capital punishment and its application, especially article 6 of the International Covenant on Civil and Political Rights and Optional Protocol (General Assembly resolution 2200 A (XXI), annex). This proposal ensures that no country which, on grounds of national law, is not yet in a position to sign such a protocol, will be legally or morally obliged to do so. But, on the other hand, it gives to those countries that have abolished capital punishment an opportunity to accede to a United Nations convention that would pledge signatories to abolish or not reintroduce capital punishment.

3. However, the Government of Portugal is aware that different legal traditions, religious traditions and historical experiences lead many nations to adopt a different view. In supporting this initiative, the Government of Portugal knows that it pursues a long-term objective. Portugal admits that it may be difficult for the next session of the General Assembly to arrive at definitive conclusions on measures to abolish capital punishment universally and to prevent its reintroduction. Nevertheless, Portugal hopes that, during its thirty-seventh session, the General Assembly will be able to give serious consideration to this question, so that agreement can be reached on what steps can be taken towards the goals of the initiative proposed in document A/C.3/35/L.75
