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CAPITAL PUNISHMENT

Note by the Secretary-General

1. In response to the General Assembly's invitation to the Economic and Social Council, in resolution 1396 (XIV) of 20 November 1959, 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 747 (XXIX) of 6 April 1960, requested the Secretary-General to provide it with a factual review of the various aspects of the question of capital punishment, consulting, as he deemed appropriate, the ad hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders set up under General Assembly resolution 415 (V) of 1 December 1950.
2. The Secretary-General accordingly submitted to the Council at its thirty-fifth session a study on capital punishment<sup>1/</sup> prepared by a consultant, Mr. Marc Ancel, on the basis of a Secretariat questionnaire circulated to Governments concerning laws, regulations and practices relating to capital punishment in their countries, and of a second questionnaire addressed to national social defence correspondents and certain non-government organizations requesting information on the deterrent effect of the death penalty and of the consequences of its abolition. The study was discussed by the ad hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders at its seventh session, held in Geneva from 7 to 16 January 1963. The comments of the ad hoc Advisory Committee of Experts were before the Council at its thirty-fifth session.<sup>2/</sup>

<sup>1/</sup> ST/SOA/SD/9. United Nations publication, Sales No.: 62.IV.2.

<sup>2/</sup> Official Records of the Economic and Social Council, Thirty-fifth Session, Annexes, agenda item 11, document E/3724, section III.

3. After considering the study on capital punishment and the comments of the Advisory Committee, the Council adopted resolution 934 (XXXV), which, inter alia, requested the Secretary-General to broaden the studies so far carried out, with a view to including in them some consideration of the differences between civil and military tribunals, and the policy of the latter in regard to the death penalty, and to prepare a report based on information received from Governments on any new developments with respect to the law and practice in their countries concerning the death penalty and on information concerning legislation and military penal jurisdiction, especially in connexion with any differences which may exist as compared with their ordinary penal legislation regarding the application of capital punishment. This report was to be submitted to the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders established under General Assembly resolution 415 (V).

4. At the eighteenth session of the General Assembly, the Third Committee, in connexion with its consideration of the report of the Economic and Social Council,<sup>3/</sup> felt that the subject of capital punishment should be considered from the standpoint of human rights by the Commission on Human Rights.<sup>4/</sup> Upon the Third Committee's recommendation the General Assembly, on 10 December 1963, adopted resolution 1918 (XVIII), which reads as follows:

"The General Assembly,

"Recalling its resolution 1396 (XIV) of 20 November 1959, in which the Economic and Social Council was invited 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,

"Noting Economic and Social Council resolution 747 (XXIX) of 6 April 1960 concerning the procedure for the study of the question of capital punishment,

"Having considered Economic and Social Council resolution 934 (XXXV) of 9 April 1963 relating to capital punishment,

"1. Endorses the action of the Economic and Social Council in its resolution 934 (XXXV);

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<sup>3/</sup> Official Records of the General Assembly, Seventeenth Session, Supplement No. 3 (A/5203).

<sup>4/</sup> Ibid., Eighteenth Session, Annexes, agenda item 12, document A/5606, paras. 44-46.

"2. Requests the Economic and Social Council to invite the Commission on Human Rights to study the report entitled Capital Punishment and the comments thereon of the Ad Hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders, and to make such recommendations on the matter as it deems appropriate;

"3. Requests the Secretary-General, after examining the report of the Commission on Human Rights and with the co-operation of the Consultative Group on the Prevention of Crime and the Treatment of Offenders, to present a report, through the Economic and Social Council, to the General Assembly not later than at its twenty-second session on new developments with respect to the law and practice concerning the death penalty and new contributions of the criminal sciences in the matter."

5. On 17 December 1963, the Economic and Social Council, at its resumed thirty-sixth session, decided to forward the Assembly's resolution to the Commission on Human Rights. The Commission, at its twenty-second session, adopted resolution 15 (XXII) of 30 March 1966, in which, after recalling the terms of General Assembly resolution 1918 (XVIII), it decided to consider the question of capital punishment, and the documentation referred to in operative paragraph 2 of that resolution, at its twenty-third session. Owing to lack of time, however, the Commission was unable to implement its decision.

6. It will be recalled that operative paragraph 3 of General Assembly resolution 1918 (XVIII) requested the Secretary-General to present a report, through the Economic and Social Council, to the General Assembly not later than its twenty-second session, on new developments with respect to the law and practice concerning the death penalty and new contributions of the criminal sciences in the matter. The Secretariat commissioned Professor Norval Morris, Julius Kreeger Professor of Criminology, University of Chicago, and a member of the Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders to prepare this study (ST/SOA/SD/10). It will be available during the course of the twenty-second session of the General Assembly.

7. It will be further recalled that Economic and Social Council resolution 934 (XXXV) envisaged the submission of this supplementary study to the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders, and General Assembly resolution 1918 (XVIII) took cognizance of the envisaged co-operation of this Group.

8. The meeting of the United Nations Consultative Group on the Prevention of Crime and the Treatment of Offenders is scheduled for August 1968. Thus, the anticipated consideration by the Group of the supplementary study prior to its presentation to the General Assembly will not be possible.

9. A further development took place during the forty-second session<sup>5/</sup> of the Economic and Social Council in June 1967, when the delegations of Sweden and Venezuela submitted a draft resolution (E/AC.7/L.514/Rev.1) on the subject of capital punishment. This resolution contained, in section I, a draft resolution to be recommended for adoption by the General Assembly, by which the General Assembly would invite Member States to amend their laws, where necessary, to provide that a person condemned to death shall not be deprived of the right to appeal to a higher judicial authority or to petition for pardon or reprieve; to provide that no death sentence shall be carried out until at least six months after the passing of the sentence and, where necessary, to amend their laws accordingly; to undertake, as from the day of adoption of the resolution, to notify the Secretary-General of the United Nations semi-annually of any death sentences subsequently passed and carried out in their countries as well as of the crimes for which these sentences have been imposed; and to inform the Secretary-General, no later than 10 December 1968, of actions taken in accordance with those recommendations.

10. The Economic and Social Council considered this draft resolution, submitted by the delegations of Sweden and Venezuela. In its resolution 1243 (XLII) of 6 June 1967, however, the Council expressed its regret that the time at its disposal had not permitted it to study the draft resolution of Sweden and Venezuela, and transmitted the draft resolution to the General Assembly for a decision as to what further steps should be taken in the matter. The text of this draft resolution is annexed to the present note.

11. In consequence of these developments, there are two matters before the General Assembly. One is the supplementary study on capital punishment which has been prepared in consequence of General Assembly resolution 1918 (XVIII), and the other is Economic and Social Council resolution 1243 (XLII) of 6 June 1967, transmitting the draft resolution of Sweden and Venezuela.

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5/ See documents E/AC.7/SR.562/571, 578 and E/SR.1479.

ANNEX

Draft resolution submitted by Sweden and Venezuela<sup>a/</sup>

The Economic and Social Council,

Recalling General Assembly resolution 1918 (XVIII) of 10 December 1963, in which the Economic and Social Council was requested to invite the Commission on Human Rights to study the report entitled Capital Punishment<sup>b/</sup> and the comments thereon of the Ad Hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders,<sup>c/</sup> and to make such recommendations on the matter as it deemed appropriate,

Regretting that the Commission on Human Rights and the Economic and Social Council have not been able, owing to lack of time, to conduct the said studies or to propose any recommendations on the subject of capital punishment, which has been on the Commission's agenda since 1964,

Recalling its resolution 934 (XXXV) of 9 April 1963, in paragraph 2 of which Governments of States Members of the United Nations were urged, inter alia, to ensure the most careful legal procedures and the greatest possible safeguards for the accused in capital cases in countries where the death penalty obtained and to keep under review, and to conduct research wherever necessary, with United Nations assistance, into the efficacy of capital punishment as a deterrent to crime in their countries, particularly where Governments were contemplating a change in their laws or practices,

I

Recommends to the General Assembly for consideration at its twenty-second session the following draft resolution:

"The General Assembly,

"Recalling that according to article 3 of the Universal Declaration of Human Rights everyone has the right to life, liberty and security of person,

a/ E/AC.7/L.514/Rev.1, as orally amended.

b/ United Nations publication, Sales No.: 62.IV.2.

c/ Official Records of the Economic and Social Council, Thirty-fifth Session, Annexes, agenda item 11, document E/3724, section III.

"Recalling further that according to article 5 of the Universal Declaration of Human Rights no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

"Having considered the report entitled Capital Punishment in the light of the comments thereon of the Ad Hoc Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders,

"Sharing the view, expressed in the report entitled Capital Punishment and endorsed by the Committee, that there is a world-wide tendency towards a considerable reduction of the number and categories of offences for which capital punishment may be imposed,

"Noting, as the Committee does, that the abolitionist policy represents the major trend among experts and practitioners in the field and that even those who do not support abolitionist policy tend to take an increasingly restrictive view of the use of capital punishment,

"Desiring to promote further the dignity of man and thus to contribute to the International Year for Human Rights,

"Invites Governments of States Members of the United Nations:

"(a) To amend their laws, where necessary, to provide that a person condemned to death shall not be deprived of the right to appeal to a higher judicial authority or to petition for pardon or reprieve;

"(b) To provide that no death sentence shall be carried out until the procedures of appeal and pardon have been terminated and in any case not until six months after the passing of the sentence in the court of first instance and, where necessary, to amend their laws accordingly;

"(c) As from the day of adoption of this resolution, to notify the Secretary-General semi-annually of any death sentences subsequently passed and carried out in their countries and of the crimes for which these sentences have been imposed;

"(d) To inform the Secretary-General, not later than 10 December 1968, of actions taken in accordance with sub-paragraphs (a) and (b) above.";

## II

1. Draws the renewed attention of Governments of Member States to paragraph 2 - in particular sub-paragraphs (a), (b) and (d) - of Economic and Social Council resolution 934 (XXXV) of 9 April 1963;

2. Requests the Secretary-General to ascertain from Governments of Member States 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, and to invite those Governments to state whether they are contemplating

such restriction or abolition and also to indicate whether changes in this respect have taken place since 1961;

3. Further requests the Secretary-General to submit a report on the matter to the Economic and Social Council at its forty-fourth session.

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