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Chairman: Mrs. Georgette CISELET (Belgium).

AGENDA ITEM 12

Report of the Economic and Social Council (chapters VI and VII) (A/4143, A/C.3/L.764/Rev.3 and Corr.1, A/C.3/L.767/Rev.1, A/C.3/L.768/Rev.1, A/C.3/L.769-770) (continued)

CAPITAL PUNISHMENT (A/C.3/L.767/REV.1)
(concluded)

1. The CHAIRMAN invited the Committee to continue its consideration of the draft resolution concerning a study on capital punishment, which had been revised and was now sponsored by seven Powers (A/C.3/L.767/Rev.1).
2. Mr. BAROR (Israel) said that, in listening to the debate on the seven-Power text (939th meeting), he had felt that there was a tendency on the one hand to over-simplify the issue and on the other to read into it an element of implementation which he was convinced the sponsors had not intended.
3. He did not feel that the draft resolution could be dismissed because it implied in any way that the right to life would be violated every time capital punishment was imposed by a competent court in accordance with the law. The text of article 6 of the draft Covenant on Civil and Political Rights^{1/} did not bear out that argument. The general view of the working party on the article had been that it was only in the absence of due process of law that the imposition of a death sentence might constitute an infringement of the right to life inherent in every human being.^{2/} Moreover, he believed that, whatever the religious and philosophical origin of the death penalty, no system of criminal law and certainly no criminal court would decree the taking of the life of a human being unless some universally recognizable purpose could be achieved thereby. Where the death penalty still existed it was applied as a measure of social protection. Although Israel had abolished it, except for the crime of genocide, in 1951, there was still discussion whether the course had been justified. However, the only considerations which could possibly justify the retention or reintroduction of the death penalty were

^{1/} Official Records of the General Assembly, Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1, para. 121.

^{2/} Ibid., para. 102.

ones which overrode the inherent right to life. As he saw it, the purpose of the draft resolution was to discover facts of sufficiently universal validity to assist Member States in deciding for themselves whether capital punishment in fact served any useful purpose.

4. He hoped that the Committee would adopt a draft resolution which would enable the United Nations to retain leadership and responsibility in the matter of social defence. He had no very strong feelings as to the organ best suited to undertake the proposed study but, since he believed that the determining factor should be that of social defence, he was inclined to think that it should be the Social Commission and that its findings should be referred by the Council to the Commission on Human Rights for comment and consideration before any further action was taken on them.

5. Begum Aziz AHMED (Pakistan) observed that Pakistan still retained the death sentence for murder and treason but in practice it was never imposed in cases of unpremeditated murder or when there were extenuating circumstances. It was, however, incumbent on society to protect the lives of innocent, law-abiding citizens and a failure to impose an adequately deterrent punishment in the case of cold-blooded murder might increase the incidence of such crimes. Therein lay the only possible justification for the imposition of the death penalty in such cases. But no one really knew whether capital punishment acted as a deterrent to crime. She felt that the proposed study would throw light on the whole question. While penal laws fell within the domestic jurisdiction of States, the findings of the study would serve as a much-needed guide to Governments and legislators. She would accordingly vote for the revised draft resolution.

6. Mr. KETRZYNSKI (Poland) said that he had certain reservations regarding the revised draft resolution, as regards both its substance and its form.

7. Quite apart from the fact that capital punishment fell within the domestic jurisdiction of States, the whole question was extremely complex. It had social, legal and moral aspects and he did not believe that either the Commission on Human Rights or the Social Commission was competent to deal with it. In his view, such a study could be undertaken only by independent experts in penal law, criminology and sociology and not by any organ composed of representatives of Governments.

8. Therefore, although he understood the humanitarian ideas behind it, he was unable to support the revised draft resolution.

9. Mr. JUVIGNY (France) took issue with those representatives who had argued that the Commission on Human Rights was not competent to study the question of capital punishment. Where the legal

aspect was concerned, it had considerable experience, having elaborated article 6 of the draft Covenant on Civil and Political Rights. Moreover, the Commission was, by its terms of reference, competent to deal with all aspects of human rights, which unquestionably included the exercise of various rights and the conditions under which they could be exercised. In addition, it could be instructed by the Council to deal with questions which were not specifically included in its terms of reference. The Council had in fact adopted a number of resolutions asking the Commission to study certain rights. Finally, the fact that the United Nations had no organ which was specially qualified to make the study was a further argument in favour of requesting the Commission on Human Rights to deal with the legal aspect of the question.

10. It was true, however, that capital punishment had a sociological aspect as well, and that certain statistical studies and judgements on values, which came under the head of social defence, were called for. That was why he welcomed the Italian amendment, which had been incorporated in the revised draft resolution (A/C.3/L.767/Rev.1).

11. However, he thought that it should be left to the Economic and Social Council to designate the bodies to undertake the study. In his view, it would be better to make no specific reference to either the Commission on Human Rights or the Social Commission, as the Council might well use the services of other bodies too. He therefore suggested that the operative paragraph should merely invite the Economic and Social Council to initiate the study in question. Then if it wished to utilize the services of independent experts it would be free to do so.

12. Mr. MEHTA (India) recalled that the question of the death penalty had been widely debated in many countries but that the views of humanists, jurists and administrators did not all point in the same direction. In India, while there was a body of opinion which favoured the abolition of capital punishment, opinion in general was divided. The Government retained the death penalty for calculated and cold-blooded murder, but only a competent court could impose it.

13. He hoped that the study would be undertaken jointly by jurists, religious leaders and other persons interested in the different aspects of capital punishment. In approving the proposal for the study, he wished to make it clear that he did not regard such approval as in any way committing Governments to the abolition of capital punishment. As he saw it, the study was merely designed to assist them in forming their own views on the desirability, or otherwise, of modifying their penal systems.

14. Mr. MONTEZUMA HURTADO (Colombia) said that the Colombian constitution prohibited the imposition of the death penalty. It was not necessary to have the threat of death as a deterrent against crime. Deprivation of liberty served the same purpose more effectively.

15. He regarded the proposed study as an important preliminary step towards the abolition of capital punishment, and would vote in favour of the revised seven-Power draft resolution.

16. Mr. SADRI (Iran) appreciated the ideas behind the draft resolution but had doubts concerning the approach for which it provided. The statements of the

various representatives had revealed differences in opinion concerning the organs competent to carry out the proposed study. If the aim of the sponsors was to prepare the way for the abolition of capital punishment, they should bear in mind that a number of Governments were already working to achieve that end. While his delegation had no objection in principle to the draft resolution, he would be unable to vote for it as long as it spelled out the organ which should undertake the study.

17. Mr. BRILLANTES (Philippines) expressed gratitude to the sponsors for changing the wording of their draft resolution so as to make it possible to have a balanced study showing the effect of both the practice and the abolition of capital punishment on the rate of criminality.

18. As regards the appropriate functional commission for carrying out the study, the Philippine delegation had no strong feelings one way or another. Even though, in the draft resolution, the Council was called upon to request the Commission on Human Rights to make the study, it was certain that the Council would seek the co-operation of whatever functional commissions or bodies it deemed appropriate. The important thing was that the study should be made. He would accordingly support the draft resolution.

19. Miss ADDISON (Ghana) said that the subject of capital punishment was a highly controversial one. Inasmuch as it had been proved that capital punishment did not exert a deterrent influence, the question arose what purpose it did serve. The value of a study such as that proposed in the draft resolution was beyond dispute. Her delegation felt that the decision as to which body should carry out the study should be left to the Council. The aspect of abolition of capital punishment should be left out of consideration until the results of the study were analysed. She would have preferred a resolution asking Governments if they wished to have the study undertaken, as such a study was in itself a controversial matter.

20. Mr. SCHWETZNER (Chile) remarked that any discussion of capital punishment must start from the broader question of the purpose of punishment in general. If the purpose was to protect society and to rehabilitate the criminal, he asked what rehabilitation was possible where the criminal was put to death. The maintenance of capital punishment in the various penal codes was an admission of weakness on the part of legislators. The death penalty was not sanctioned as a punishment for political crimes in many countries and all extradition treaties contained provisions excluding the possibility of the application of the death sentence to the person extradited. All those facts were proof of the growing resistance to capital punishment. The subject had been discussed at two regional seminars on the protection of human rights in criminal law and procedure, which had been held in the Philippines^{3/} and Chile^{4/} in 1958 under the programme of advisory services in the field of human rights. The seminar in Chile, after extensive dis-

^{3/} See 1958 Seminar on the Protection of Human Rights in Criminal Law and Procedure, Baguio City, the Philippines, 17 to 28 February 1958 (United Nations, 1958) (ST/TAA/HR/2).

^{4/} See Seminario acerca de la Protección de los Derechos Humanos en el Derecho y el Procedimiento penales, Santiago, Chile, 19 to 30 May 1958 (United Nations, 1959) (ST/TAA/HR/3).

ussion, had come to the conclusion that neither the maintenance nor the abolition of capital punishment exerted any influence whatever on the growth or decline of the rate of crime. That fact alone should give the Committee pause. Capital punishment had been abolished in several Latin American countries but not, he regretted to say, in his own country. He himself, in 1935, had sponsored a bill to abolish it but the bill had not been adopted. His delegation welcomed the initiative of the sponsors and would support their draft resolution.

21. Mrs. ROSSEL (Sweden) remarked that her own country did not believe in capital punishment but did not criticize other countries for retaining or reintroducing it. The only purpose of the sponsors of the draft resolution was to ensure the initiation of an objective and unprejudiced study by experts of the situation with respect to capital punishment in the various countries of the world. Such a study would cover the philosophical, sociological, anthropological, historical, legal and other aspects of the question. It was difficult to understand the argument that the proposed study would constitute interference in matters within the domestic jurisdiction of States. The United Nations had made many such studies in the past, for example those in connexion with arbitrary arrest, and discrimination in education. If all the eighty-two Member States co-operated in the study, the results would be almost universal and would provide a basis for future recommendations on the subject of capital punishment. Although she did not share the fears expressed by the Philippine representative at the preceding meeting, account had been taken of his objections by amending the phrase to which he had objected to read "and of the effects of capital punishment, and the abolition thereof, on the rate of criminality".

22. The sponsors had considered it appropriate for the Council to request the Commission on Human Rights to make the study because, as the French representative had pointed out, the matter came within the terms of reference of that body. The Commission had had experience with the relevant problems in drafting the Universal Declaration of Human Rights and the draft International Covenants on Human Rights. It was true that certain aspects of the question had come within the purview of the Social Commission and that other United Nations bodies had dealt with related matters, but the sponsors had felt that the Commission on Human Rights could be entrusted, on its own initiative, to draw on the experience of other United Nations bodies and that there was no need to itemize them in the resolution.

23. However, in view of the arguments of certain representatives that the resolution should not specify whether the Commission on Human Rights or the Social Commission should deal with the question first, the sponsors agreed that the decision could be left to the Council. They accordingly proposed the deletion of the reference to the Commission on Human Rights in the first sentence of the operative paragraph, the replacement of the word "undertake" by the word "initiate", and the deletion of the second sentence. They also proposed the deletion of the entire preambular paragraph, in order to enable the Council to refer to whatever resolutions it saw fit. The draft resolution would therefore read:

"The General Assembly

"Invites 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."

24. The CHAIRMAN put that text to the vote.

At the request of the representative of Japan, a vote was taken by roll-call.

Indonesia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Indonesia, Iraq, Ireland, Israel, Italy, Japan, Mexico, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Saudi Arabia, Sweden, Thailand, Tunisia, United States of America, Uruguay, Venezuela, Argentina, Australia, Austria, Brazil, Burma, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Finland, France, Guatemala, Haiti, Honduras, Iceland, India.

Against: Liberia.

Abstaining: Iran, Jordan, Lebanon, Libya, Morocco, Poland, Portugal, Romania, Spain, Sudan, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Yemen, Yugoslavia, Afghanistan, Albania, Belgium, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Czechoslovakia, Ethiopia, Federation of Malaya, Ghana, Greece, Hungary.

The text was adopted by 43 votes to 1, with 30 abstentions.

25. Mr. CALAMARI (Panama) said that he had voted for the draft resolution because it was fully in line with the policy of his delegation, which had introduced an amendment to article 6 of the draft Covenant on Civil and Political Rights at the twelfth session to the effect that nothing in that article should be invoked to delay or prevent the abolition of capital punishment by any State party to the Covenant.^{5/} He hoped that the progressive abolition of the death penalty would be the first subject to be studied when the resolution just adopted was put into effect.

26. Mr. BARRATT (Union of South Africa) stated that he had abstained on the draft resolution, not because he had any doubts about the seriousness of the question of capital punishment, but because he did not feel that the question could be studied with advantage in the international sphere at the current time. Useful studies were already being undertaken in the closely related field of social defence and efforts should be concentrated on them.

27. Princess PINGPEANG YUKANTHOR (Cambodia) said that the death penalty existed in Cambodia. She had abstained on the draft resolution because the question of capital punishment was currently being considered by the Cambodian Government and she did not wish to prejudice the decision it might take.

28. Mr. RUDA (Argentina) remarked that he had voted for the draft resolution because it was fully

^{5/} See Official Records of the General Assembly, Twelfth Session, Annexes, agenda item 33, document A/3764 and Add.1, paras. 96 and 106.

in harmony with Argentina's traditional policy of respect for human life.

29. Miss BERNARDINO (Dominican Republic) said she had voted for the draft resolution because it was fully in line with the practice in the Dominican Republic, where the death penalty had always been prohibited by the Constitution.

LOW-COST HOUSING (A/C.3/L.764/REV.3 AND CORR.1) (concluded)

30. The CHAIRMAN invited the Committee to consider the revised Peruvian draft resolution (A/C.3/L.764/Rev.3 and Corr.1) and the Saudi Arabian amendments (A/C.3/L.776) to it.

31. Mr. BAROODY (Saudi Arabia) said that, although his amendments had been submitted to the second revised text submitted by Peru (A/C.3/L.764/Rev.2), he now wished them to apply to the text under discussion (A/C.3/L.764/Rev.3 and Corr.1), as the wording still needed clarification.

32. Lady PETRIE (United Kingdom) supported the Peruvian draft resolution. The new wording of operative paragraph 3 made it quite clear that there were two groups of countries, some with housing problems, about whose needs the Secretary-General was requested to collect and disseminate information, and other countries, which might be able to assist the former by giving them the benefit of their experience. The Saudi Arabian amendments merely lengthened the text without adding anything of value.

33. Mr. MEHTA (India) thought that, as the Peruvian and Saudi Arabian representatives agreed on the substance of operative paragraph 3 and differed only on its wording, the final formulation might be left to the Rapporteur. Since there seemed to be no point in discussing the matter further, he formally moved the closure of the debate.

34. Mr. FARHADI (Afghanistan) and Princess PINGPEANG YUKANTHOR (Cambodia) opposed the motion for closure.

35. The CHAIRMAN put the motion to the vote.

The motion for closure was adopted by 47 votes to 4, with 17 abstentions.

36. The CHAIRMAN invited the Committee to vote on the Saudi Arabian amendments (A/C.3/L.776) and the Peruvian draft resolution (A/C.3/L.764/Rev.3 and Corr.1).

The amendments were adopted by 38 votes to 20, with 11 abstentions.

The draft resolution, as amended, was adopted by 72 votes to none, with 1 abstention.

37. Princess PINGPEANG YUKANTHOR (Cambodia) said that she had abstained in the vote on the Peruvian draft resolution because she had been unable to ascertain whether the Peruvian representative had accepted her suggested rewording of the French text of operative paragraph 3, which was as follows:

"Prie le Secrétaire général de consulter les gouvernements intéressés et les institutions spécialisées compétentes en vue de recueillir et de diffuser des renseignements ..."

She also did not know whether the Saudi Arabian representative felt he could accept that as a rewording of his text.

38. Mr. COX (Peru) replied that, although he was grateful to the Cambodian representative for her suggestion, he had been unable to give an opinion on it, as he did not think that it affected the Spanish text.

39. Mr. BAROODY (Saudi Arabia) explained that, to his regret, he had not had time to consider the Cambodian representative's suggestion in relation to his own text.

40. The CHAIRMAN said that the Cambodian representative's suggestion would be transmitted to the competent service of the Secretariat.

The meeting rose at 5.55 p.m.