



THE DEATH PENALTY

A WORLD-WIDE PERSPECTIVE

A Report to the

UNITED NATIONS COMMITTEE ON
CRIME PREVENTION AND CONTROL

By

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FOREWORD

This special issue of the *International Review of Criminal Policy* presents a study of the question of the death penalty and new contributions of the criminal sciences in the matter, prepared and published in pursuance of Economic and Social Council resolutions 1986/10, section X, and 1989/64. In the latter resolution the Secretary-General was also requested to make this study available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August/7 September 1990).

In the preparation of this study particular attention was given to the inherent right of every human being to life, as set forth in Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights. Due account was also taken of the main objective of the United Nations in the field of capital punishment: to progressively restrict the number of offences for which the death penalty might be imposed with a view to its eventual abolition. This objective was emphasized repeatedly by various United Nations bodies, e.g. the General Assembly in its resolutions 2857 (XXVI) and 32/61 and the Economic and Social Council in its resolutions 1574(L), 1945(LIV) and 1930(LVIII).

In addition, the study confirms the urgent need for more effective implementation of the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the Economic and Social Council in its resolution 1984/50 and endorsed by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 15.

The preparation of this study was made possible through extra-budgetary funds, generously provided by the Governments of Austria, Italy, the Netherlands and the United Kingdom. Their valuable contributions are gratefully acknowledged.

The United Nations Secretariat
July 1989

PREFACE

In resolution 1986/10 of 21 May 1986, the Economic and Social Council of the United Nations (ECOSOC) requested the Secretary-General, *inter alia*, to submit to the Committee on Crime Prevention and Control, at its tenth session in 1988, a study on the question of the death penalty and new contributions of the criminal sciences in the matter, subject to the availability of extra-budgetary funds. In June 1987 the United Nations Secretariat invited me to act as the consultant on that question and in February 1988 extra-budgetary funds were made available to enable the study to proceed.

The report was submitted to the tenth session of the United Nations Committee on Crime Prevention and Control which met in Vienna in August 1988. In editing the text, I have attempted to bring it as far up to date as possible. In its draft resolution submitted for the consideration of the ECOSOC at its spring session in 1989, the Council expressed its appreciation for the preparation of this study and also expressed its appreciation to those governments whose contributions had made it possible. Finally, the Council requested the Secretary-General to publish the study and to make it available, with other relevant documents, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

I would like to express my gratitude to Dr Sara Cohen, Dr Lucia Zedner, and Dr Timothy Besley who assisted me in the preparation of this report and to Humaira Ahmed for her secretarial support. I would also like to record my indebtedness to those countries whose financial support made it

possible for me to carry out this inquiry. I am also indebted to the following for responding so readily to my request for information:

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R.H.

Oxford

February 1989

Note

Since the first Impression of this report was published the death penalty has been abolished absolutely for all crimes in Czechoslovakia (1990), Namibia (1990), Romania (1989) and in New Zealand (1989, where it had previously been abolished for ordinary crimes). A moratorium on executions was announced in South Africa (1990) while Parliament considers legislation to reduce the scope of the death penalty. On 15 December 1989, the United Nations General Assembly adopted the second optional proposal to the International Covenant on Civil and Political Rights (see p. 33 below).

R.H.

Oxford

June 1990

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Introduction

1. This is not the first time that a world-wide review of the death penalty has been carried out. It follows, after a long interval, the reports entitled *Capital Punishment* (1962), covering the years 1956 to 1960, written by Marc Ancel, Conseiller à la Cour de Cassation of France and Director of the Criminal Science Section of the Institute of Comparative Law of Paris, and *Capital Punishment: Developments 1961–1965* (1967), written by Norval Morris, Professor of Law and Criminology and Director of the Centre for Studies in Criminal Justice, University of Chicago. Both of these inquiries, which still deserve to be studied, were based on replies to a questionnaire sent by the Secretary-General to all member states of the United Nations, and to certain non-member states. Since the 'Morris report' was published the United Nations has continued to send questionnaires in order to survey developments every five years: 1969–73, 1974–8 and 1979–83. The last one being published internally in 1985. In addition, information has been sought on the extent to which various safeguards relating to the imposition of the death penalty in retentionist countries were being observed. The last survey, which inquired into the extent to which countries observed the nine safeguards laid down by ECOSOC in 1984, was published in 1987.

2. However, no provisions were made by the United Nations to send to member states a special questionnaire to gather information for the present study. It was therefore based on the reports mentioned above, some of which are by now rather dated, and upon any other information that could

be gleaned in the time available from organizations, individuals and libraries.¹ In particular I have been helped by generous access to the reports and archives of Amnesty International.

3. Like all others who have attempted to map trends in the law and the practical application of the death penalty over a number of years, I have been hampered by the lack of systematically reported up-to-date information on developments in many parts of the world. Many countries publish no statistics of death sentences or executions, and even if statistics are prepared they may be unobtainable outside the country in question. The latest United Nations material on the numbers sentenced to death and executed refers to the years 1979–83. And although Amnesty International keeps a tally of the reports it receives, there is no way by which it can ensure that, for a considerable number of countries, the figures are either accurate or recent. Sometimes the last reports it has received on the death penalty refer to several years ago and there is no confirmation whether the law, procedure, or practice has since changed. In particular, there is frequently no information on whether death sentences imposed have been carried out.

4. The replies to the United Nations from the various countries have been sporadic.² Those which have replied over-represent the countries which have abolished or appear to be moving towards the abolition of the death penalty. In particular, those which use capital punishment the most are

¹ I am especially indebted to Professor Larry Wenger and his staff at the Library of the University of Virginia Law School for making so much material available to me.

² Fifty-nine countries, plus 16 British Territories—a total of 75—replied to the questionnaire which formed the basis of the “Morris report”. Only 49 replied to the questionnaire covering the years 1969–73, 91 sent information for 1974–8, and 64 for 1979–83.

those which usually fail to reply. When replies are received questions are not answered uniformly, nor necessarily regularly from one quinquennium to the next. There are the inevitable problems of definition, of terminology, and of interpretation already highlighted by Ancel and Morris, not to mention plain avoidance of difficult and embarrassing questions.

5. Having had the aid of an authoritative request for information Marc Ancel nevertheless concluded that 'the facts are less easy to ascertain than was supposed . . . To elicit more complete and more explicit replies, the questionnaires would have had to ask for much fuller and more specific particulars, with the consequence that the survey might well have taken a number of years.'³

Without the aid of such a special survey, let alone the time available, it is obviously not possible for the present study to give an authoritative or entirely accurate account of world-wide trends in the law and procedures relating to the death penalty. Yet, even if it had been possible, there would have been many gaps between the law and procedure as set out in statutes and their application in practice, which no officially compiled questionnaires would have revealed. It is hoped that, by juxtaposing official and unofficial sources, it may be possible to get closer to the realities of trends in the use of the death penalty during the twenty-two years since Professor Morris reported. But such a method naturally raises problems of veracity and objectivity. There is quite often a direct conflict between official information and the reports and claims made by Amnesty International and by scholars: claims which frequently go unanswered, or are flatly denied. Who should one believe? The stance taken in this report is to try to make it plain whenever the information has been

³ United Nations, *Capital Punishment* (1962), pp. 6-7.

unsubstantiated and to give, wherever possible, the source for any allegation of practices which are officially denied.

6. It has to be recognized that information of an empirical kind, based on studies of the use of the death penalty and its effects, comes from only a few countries: those which have a strong tradition of such research and a body of scholars committed to challenging the legal and penological assumptions upon which support for the death penalty is often based. As Western European countries have abandoned the death penalty so have their scholars generally lost interest in it. Other than the occasional study in South Africa, Nigeria, Poland, Yugoslavia, and Canada, the empirical inquiries have been concentrated on the United States of America, and even there, mainly on a few southern states. They are no less valuable for that. But they do, of course, provide a rather distorted and partial view of the death penalty looked at in its world-wide context. This is particularly so when it is recognized that, in relation to the definition of capital murder, the prosecution and trial procedures, the numbers executed in relation to the number of homicides and per head of the population, let alone the racial and cultural complexities of the states which have executed offenders, the United States differs in so many ways from other countries which retain the death penalty.

7. It would be impossible, without a thorough and lengthy investigation, both historical and contemporaneous, of those societies which have retained or expanded their use of the death penalty in law or practice, to give more than a superficial account of why they have resisted the international appeal for restriction, leading to abolition. All that can be done is to sketch, in broad outline, the major factors which have appeared to continue to support the use of capital punishment and, in some instances, without the invariable

observance of procedures which protect the fundamental legal rights of the accused.

8. This report is not intended to be an abolitionist tract. But it is naturally orientated towards assessing the extent to which the policy objectives of the United Nations are being achieved, and what impediments there appear to be in bringing them to fruition, namely 'the progressive restriction of the number of offences for which the death penalty might be imposed, with a view to its abolition'.⁴

9. In accordance with the mandate set out by the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, this report has sought to shed as much light as possible on the current trends relating to the question of the abolition of the death penalty world-wide, paying particular attention to the trends in limiting or expanding the categories of offences to which the death penalty may be applied by law and is applied in practice; the insights gained from research on the question of the way in which the death penalty is enforced, in particular whether there is evidence of arbitrariness or discrimination in its application; new research developments which may shed light on whether the death penalty has a unique deterrent value; and any insights which may be obtained about the role of public opinion and other factors (legislative and practical) which may be influential in shaping policy leading to the restriction or abolition of capital punishment.

10. This inquiry has not followed entirely the structure of the reports prepared by Professors Ancel and Morris nearly a quarter of a century ago. Its purpose is less to chart practices

⁴ See 'United Nations Action in the Field of Capital Punishment', in *United Nations Crime Prevention and Criminal Justice Newsletter*, 12 and 13 (Nov. 1986), pp. 2-4.

than to analyse trends. It has been found useful therefore to follow the approach of the United Nations, so as to examine the question in relation to regional, cultural or political entities, rather than simply to list countries which appear to share one or more features in common.

11. Finally, no one can embark upon a study of the death penalty without making the commonplace observation that from a philosophical and policy stand point there appears to be nothing new to be said. Opinions on the death penalty reflect, of course, wider moral and political values, differing perceptions of the gravity of offences committed for a variety of motives, and evaluations of the culpability to be attributed to offenders. Some protagonists of abolition give priority to their fundamental belief that the death penalty is a violation of the human right to life, whatever claims for its utility may be made. But it has to be recognized that in many societies this view is still not self-evident and whether it is embraced or not will in part be determined by the extent to which it is shown that the death penalty does or does not serve the penal purposes claimed for it. Even so, while empirical evidence may shed light on the reality of homicide, on the way the death penalty is applied, and its effects on the level of the crime it is meant to deter, the way in which these findings will be interpreted, the weight attached to them, and the inferences drawn from them will all inevitably be coloured by broader moral and political judgments.