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@ABOLITION OF THE DEATH PENALTY WORLDWIDE

Developments in 1994

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1. ABOLITION OF THE DEATH PENALTY

In Italy, a bill eliminating the death penalty from the Military Penal Code in Time of War received its final approval from the parliament on 5th October 1994 and was promulgated on 25th October. As a result, Italy has now abolished the death penalty for all crimes.

The effort to abolish the death penalty in Italy has a long history. In 1786 Grand Duke Leopold of Tuscany promulgated a penal code which completely eliminated the death penalty. This action was one of a number of early abolitionist efforts inspired by the publication in 1764 of Cesare Beccaria's On Crimes and Punishments, a book which contained the first sustained, systematic critique of the death penalty. The death penalty was reintroduced some years later, but the experience of Tuscany was cited as a successful experiment by people arguing for abolition elsewhere.

In 1889 Italy abolished the death penalty for all crimes under a new penal code, but the penalty was reintroduced for certain crimes against the state in 1926 under the government of Benito Mussolini, and its scope was broadened in 1931. It was finally abolished for common criminal offences and military offences committed in peacetime under the new Constitution of the Republic of Italy of 27th December 1947.²

In recent years the subject of the death penalty as an international issue has attracted considerable public interest in Italy in the form of scholarly discussions, popular books and articles,³ and public campaigns

¹ This paper will be published in the University of Westminster (United Kingdom) Centre for Capital Punishment Studies, Yearbook on the Abolition of the Death Penalty, Boston, Northeastern University Press (1996, forthcoming).

² Amnesty International, When the State Kills... The Death Penalty v. Human Rights, London, Amnesty International Publications, 1989, pages 72, 155.

³ One recent book follows the cases of prisoners facing imminent execution in four countries - Sudan, Taiwan, the USSR and the USA (Sandro Veronesi, Occhio per occhio; La pena di morte in quattro storie, Milan, Mondadori, 1992).

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against the use of the penalty abroad. An international colloquium was held in Bologna in 1992,⁴ and in 1987 an international conference on the death penalty was held in Siracusa under the auspices of the International Institute of Higher Studies in International Criminal Sciences.⁵

Italy is the latest in a series of countries which, having abolished the death penalty for common crimes, have gone on to abolish it for military and other exceptional crimes. Countries which have taken this path since the Second World War are Austria in 1968, Finland and Sweden in 1972, Portugal in 1976, Denmark in 1978, Norway in 1979, the Netherlands in 1982, New Zealand in 1989, Switzerland in 1992 and Greece in 1993.⁶

The standard arguments against the death penalty for common crimes - that it violates human rights, that there is an inherent risk of executing the innocent, that it negates the possibility of rehabilitating the offender - apply to the death penalty for wartime and other exceptional crimes, but there are also special arguments relating to the latter. These arguments were brought together in a paper issued by Amnesty International during the year.⁷ They are often cited in debates over the issue.

By the end of 1994, 55 countries and territories had abolished the death penalty for all offences. The figure of 55 included the Republic of Palau, which became independent in October. Fifteen countries had abolished the penalty for all but exceptional crimes, while at least 27 countries and territories which retained the death penalty in law were classified by Amnesty International as abolitionist *de facto*, in that they had not carried out any executions for the last 10 years or more. Ninety-seven countries retained the death penalty.

Figures compiled by Amnesty International in 1994 showed the enormous advances made in the abolition of the death penalty in recent years. (**TABLE 1**) At year end, the number of countries which had abolished the death penalty for all crimes had more than doubled since 1980, and the number of countries abolitionist in law or practice had risen from 62 to 97 over the same period. The first country permanently to abolish the death penalty for all crimes, Venezuela, did so in 1963; by 1975 the number had risen to 20, an average increase of one country every seven years. In 1980 the number had risen to 25, and at the end of 1994 it stood at 55. Since 1976 an average of nearly two countries per year has become totally abolitionist, and the rise in the number of totally abolitionist countries has accelerated since 1988. The death penalty is being abolished today faster than ever before in history.

2. DEFEAT OF MOVE TO REINTRODUCE THE DEATH PENALTY

⁴The report of the colloquium, *La pena di morte nel mondo: Convegno internazionale di Bologna (28 - 30 ottobre 1982)*, Casale Monferrato, Marietti, 1983, includes the results of an opinion poll conducted by two researchers at the Carlo Cattaneo Institute in Bologna.

⁵*La peine de mort: Travaux de la Conférence Internationale...*, *Revue Internationale de Droit Pénal*, Vol. 58 (1987), Nos. 3-4.

⁶Amnesty International, "List of Abolitionist and Retentionist Countries", issued periodically.

⁷Antonio Marchesi, "The Death Penalty in Wartime: Arguments for Abolition", AI Index: ACT 50/01/94, January 1994. The paper was based on research conducted by the death penalty theme group of Amnesty International's Dutch Section.

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Proposed amendments to the Criminal Justice and Public Order Bill which would have restored the death penalty for murder or for the murder of a police officer acting in the execution of his duty were defeated in the House of Commons (lower house of parliament) of the United Kingdom on 21 February 1994 by 403 votes to 159 and 383 votes to 186 respectively. The majorities of 244 and 197 were larger than in the last previous debate on the death penalty in 1990, when similar motions for reintroduction were defeated by majorities of 185 and 135 respectively.

During the debate Michael Howard, Secretary of State for Home Affairs (the cabinet minister responsible for law and order), said that until the 1990 debate he had voted consistently in favour of restoring the death penalty for certain categories of murder, believing that the deterrent effect would be greatest for those categories and that the appeals process would effectively eliminate the risk of a miscarriage of justice. But several recent miscarriages of justice had caused him to change his mind. He said:

"Miscarriages of justice are a blot on a civilized society. For someone to spend years in prison for a crime he or she did not commit is both a terrible thing and one for which release from prison and financial recompense cannot make amends. But even that injustice cannot be compared with the icy comfort of a posthumous pardon. When we consider the plight of those who have been wrongly convicted, we cannot but be relieved that the death penalty was not available. We should not fail to consider the irreparable damage that would have been inflicted on the criminal justice system had innocent people been executed."⁸

3. EXPANSIONS OF THE SCOPE OF THE DEATH PENALTY

The scope of the death penalty was expanded in several countries.

- In Lebanon, following the bombing of a church on 27 February in which at least 10 people died, the parliament on 10 March approved government proposals to extend the death penalty to a further category of murder and to politically motivated killings. On 23 April judicial executions resumed for the first time in 11 years when Bassam Saleh al-Muslah was hanged; he had been convicted of murder and sentenced to death in 1993. Three further executions were carried out in the course of the year.
- In Nigeria, the Civil Disturbances Tribunal set up in April 1994 by Rivers State Authority under the Special Tribunal (Offences Relating to Civil Disturbances) Edict, 1994 was reportedly given the power to impose the death penalty for crimes not previously punishable by death, including attempted murder.
- In the USA, the death penalty was introduced for some 60 new offences under federal (national) civilian law under the Federal Death Penalty Act of 1994⁹. These included the murder of federal officials and certain non-homicidal offences such as treason and espionage. Among the crimes made punishable by death under the Act are felonious drug offences committed as part of a "continuing criminal enterprise"

⁸Parliamentary Debates (Hansard), House of Commons, Official Report, 21 February 1994, column 45.

⁹The Federal Death Penalty Act of 1994 consists of Title VI of the Violent Crime Control Act of 1994.

The death penalty is introduced under a new chapter 228 of title 18 of the US Code. The relevant sections are 18 US Code 3591-3598. The Federal Death Penalty Act of 1994 was adopted by the Congress in August and signed by President Bill Clinton on 13 September.

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and involving specified large gross receipts or specified large quantities of heroin, cocaine, marijuana, LSD, amphetamines or certain other synthetic drugs. The Act also provides for the death penalty for attempted killings committed or ordered by a leader of a "continuing criminal enterprise" of drug trafficking in order to obstruct an investigation or prosecution.

Also in the USA, Kansas in April reinstated the death penalty for murder, becoming the 37th US state to authorize its use. The governor of Kansas, Joan Finney, who personally opposed the death penalty, allowed the reinstatement bill to become law without her signature. The law, which came into effect on 1 July, provides for the death penalty as an optional punishment for seven types of intentional, premeditated murder, including the killing of a rape victim or a police officer. It establishes lethal injection as the method of execution. The last execution carried out in Kansas was in 1965.

4. PUBLIC OPINION POLLS

According to a poll of more than 3,000 adults conducted by the Prime Minister's office in Japan and published on 25 November, 73.8 per cent of respondents said that the death penalty was unavoidable in certain circumstances. Among the reasons given were that felons should compensate with their own lives and that the death penalty helps to deter felonies. But 13.6 per cent said the death penalty should be abolished, a 7 per cent increase over a similar survey in 1989, and a high proportion of those who considered the death penalty unavoidable in certain circumstances agreed that it could be abolished if circumstances changed in the future. The total number of abolitionists together with these "conditional" abolitionists was higher than the number of people who thought the death penalty could never be abolished.

Following the publication of the poll, two Japanese prisoners, Ajima Yukio and Sasaki Kazumitsu, were executed in secret on 1 December. Both had been convicted of murder; Ajima Yukio had been under sentence of death for 16 years. The executions were the first in more than a year. In line with its established policy, the Japanese Government refused to confirm that the executions had taken place. Amnesty International expressed concern that the results of the opinion poll might be used to justify further executions.

5. NEW PARTIES TO INTERNATIONAL TREATIES ON THE DEATH PENALTY

During the year, Denmark, Hungary, Malta, Namibia, Slovenia, the Seychelles and Switzerland became parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, bringing the number of states parties to 26. Ireland, Romania and Slovenia became parties to Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights") concerning the abolition of the death penalty, bringing the number of states parties to 23. Uruguay became a party to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, bringing the number of states parties to three; Brazil signed the Protocol, signifying its intention to become a party at a later date.

6. DEVELOPMENTS IN INTERGOVERNMENTAL ORGANIZATIONS

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There were developments or discussions on the death penalty in several intergovernmental organizations in the course of the year.

- In his report to the 50th session of the United Nations (UN) Commission on Human Rights (31 January - 11 March 1994), the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Wady Ndiaye, expressed concern at reports of the extension of the scope of the death penalty in several countries during 1993 (paragraph 676). In the conclusions and recommendations of the report, he emphasized that "the abolition of capital punishment is most desirable" and stated: "The scope of application of the death penalty should never be extended and the Special Rapporteur invites those States which have done so to reconsider." (Paragraph 677)

The Special Rapporteur drew attention to reports from 23 countries in 1993 of legislation and practice leading to the imposition and carrying out of death sentences where the defendants did not fully benefit from international guarantees for a fair trial (paragraph 680).¹⁰ He also cited reports of death sentences imposed on people despite their serious mental retardation in the USA, and of people under the age of 18 at the time of the offence being sentenced to death in Pakistan and executed in the USA (paragraphs 472, 620, 628, 685-686). The Special Rapporteur called on the governments in question to conform to the relevant international standards providing for fair trials in death penalty cases (paragraph 684) and "to consider which measures may be more suitable than the death penalty to promote rehabilitation and reinsertion into society of juvenile or mentally retarded offenders" (paragraph 687).¹¹

In its resolution 1994/82, adopted without a vote on 9 March, the Commission on Human Rights requested the Special Rapporteur "to continue monitoring the implementation of existing international standards on safeguards and restrictions relating to the imposition of capital punishment, bearing in mind the comments made by the Human Rights Committee in its interpretation of article 6 of the International Covenant on Civil and Political Rights, as well as the Second Optional Protocol thereto".¹² The Commission also requested the Special Rapporteur "to respond effectively to information which comes before him, in particular when an extrajudicial, summary or arbitrary execution is imminent or threatened or when such an execution has occurred" and requested the UN Secretary-General "to continue to use his best endeavours in cases where the minimum standard of legal safeguards provided for in articles 6, 9, 14

¹⁰The countries cited were Algeria, Azerbaijan, Bangladesh, China, Comoros, Egypt, Iran, Kuwait, Kyrgyzstan, Malawi, Malaysia, Nigeria, Pakistan, Peru, Saudi Arabia, Sierra Leone, South Africa, Syria, Tadjikistan, Turkmenistan, USA, Uzbekistan and Yemen.

¹¹Extrajudicial, summary or arbitrary executions; report by the Special Rapporteur..., UN document No. E/CN.4/1994/7, 7 December 1993 and E/CN.4/1997/7/Corr.2, 14 March 1994.

¹²In a general comment on Article 6 of the International Covenant on Civil and Political Rights, adopted at its 378th meeting (16th session) on 27 July 1982 by the Human Rights Committee set up under the Covenant, the Committee stated that Article 6 "refers generally to abolition [of the death penalty] in terms which strongly suggest...that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life..." The Committee also cited the provision in Article 6(2) that death sentences may be imposed only for the most serious crimes and stated that in its opinion "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure." Extracts from the general comment of the Human Rights Committee are reproduced in When the State Kills..., *op. cit.*, Appendix 3, pp. 244-245. AI Index: ACT 50/07/95 Amnesty International October 1995

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and 15 of the International Covenant on Civil and Political Rights appears not to be respected". The language of the resolution on these points was nearly identical to that of the resolution on extrajudicial, summary or arbitrary executions adopted by the Commission on Human Rights the previous year.

- On 4 October the Parliamentary Assembly of the 32-member Council of Europe adopted a recommendation, No. 1246 (1994), calling for the creation of a further protocol to the European Convention on Human Rights on the abolition of the death penalty. Unlike Protocol No. 6 to the Convention, which provides for the abolition of the death penalty but allows for its retention in time of war or imminent threat of war, the protocol envisaged in the recommendation would constitute an agreement among states parties to it to abolish the death penalty in all circumstances with no exceptions.

In recommendation 1246 the Parliamentary Assembly also recommended that the Committee of Ministers of the Council of Europe set up a control mechanism whereby states which retain the death penalty would be obliged to inform the Secretary-General of the Council of Europe without delay of any death sentences passed, and which would bind any country that schedules an execution to halt it for a period of six months, during which time the Secretary-General could send a delegation to conduct an investigation and make a recommendation to the country concerned. States retaining the death penalty would be obliged to set up national commissions with a view to abolishing the penalty and would be called on to implement a moratorium on executions immediately while the commissions fulfilled their tasks. These provisions for a control mechanism would apply both to member states of the Council of Europe and to states whose legislative assemblies enjoy special guest status with the Parliamentary Assembly.

The Parliamentary Assembly also recommended that "in accordance with the established case-law of the European Court of Human Rights", the Committee of Ministers "not allow the extradition of any person to a country in which he or she risks being sentenced to death and subjected to the extreme conditions on 'death row'"; that the Committee organize a conference on the abolition of the death penalty, with the participation of all member states and states holding special guest status; and that the Committee "consider the attitude of applicant states towards the death penalty when deciding on their admission as full members to the Council of Europe".

Following the adoption of the recommendation by the Parliamentary Assembly, the Council of Europe's Steering Committee on Human Rights appointed two rapporteurs to prepare an opinion on the proposals contained in it.

The Parliamentary Assembly also adopted a resolution (No. 1044 (1994)) on the abolition of capital punishment on 4 October. In the resolution, the Assembly called for the total abolition of the death penalty in all member states of the Council of Europe and all states holding special guest status. It invited all member states which have not done so to sign and ratify Protocol No. 6, and stated that "the willingness to ratify the protocol [should] be made a prerequisite for membership of the Council of Europe." In the resolution the Assembly also "calls upon all the parliaments in the world which have not yet abolished the death penalty to do so promptly, following the example of the majority of Council of Europe member states" and "urges all heads of state and all parliaments in whose countries death sentences are passed to grant clemency to the convicted".

The recommendation and the resolution had been proposed in a report prepared by Hans Göran Franck, a

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Swedish member of the Parliamentary Assembly.¹³

• In response to an initiative led by Italy, the Third Committee (Social, Humanitarian and Cultural) of the UN General Assembly on 9 December considered a draft resolution, co-sponsored by 49 countries, whereby the General Assembly would have encouraged all states which have not yet abolished the death penalty "to consider the opportunity of instituting a moratorium on pending executions with a view to ensuring that the principle that no State should dispose of the life of any human being be affirmed in every part of the world by the year 2000".¹⁴

Singapore proposed an amendment introducing a preambular paragraph affirming "the sovereign right of States to determine the legal measures and penalties which are appropriate in their societies to combat serious crimes effectively".

Representatives of Singapore and Egypt, speaking in favour of the proposed amendment, emphasized the importance of state sovereignty, while speakers against it called for adherence to international standards. The German representative, for example, said (according to the account of the debate issued by the UN Department of Public Information) that the amendment

"would indicate that in the future the standard to determine the legitimacy of a legal measure or penalty would involve only its application in a single society. That should not be the case, since there were further standards by which to measure penalties. Penalties should not be cruel, inhuman or degrading. International provisions that were widely accepted could not be ignored. The international standards could not be the standard of a single State. Were that to be the case, if one country considered torture to be appropriate, the international community would have to accept that practice. Clearly, such a practice would be very dangerous."

The Singaporean amendment was adopted by a vote of 70 in favour to 65 against, with 21 abstentions. All co-sponsors of the resolution then withdrew their co-sponsorship, and the draft resolution was then rejected by a vote of 36 in favour to 44 against, with 74 abstentions.¹⁵

¹³Report on the Abolition of Capital Punishment, Parliamentary Assembly document No. 7154, 15 September 1994. The report was based on the results of a questionnaire sent to the chairpersons of national parliamentary delegations. Replies were received from 30 of the 32 Council of Europe member states and eight of the nine states holding special guest status. The information conveyed in the replies is summarized in Parliamentary Assembly, Committee on Legal Affairs and Human Rights, The Abolition of Capital Punishment: Answers to the Questionnaire, document No. AS/Jur (1994) 48, 5 September 1994.

¹⁴As listed in a UN press release, the 49 co-sponsors were Andorra, Argentina, Australia, Austria, Belgium, Bolivia, Cambodia, Cape Verde, Chile, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Greece, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Marshall Islands, Micronesia, Monaco, New Zealand, Nicaragua, Norway, Panama, Paraguay, Portugal, Romania, San Marino, Sao Tomé and Príncipe, Slovak Republic, Solomon Islands, Spain, Sweden, Uruguay, Vanuatu and Venezuela (UN Department of Public Information, "Draft Resolution on Capital Punishment Rejected by Third Committee", press release, document No. GA/SHC/3287, 9 December 1994, pp. 2-3).

¹⁵UN Department of Public Information, *op. cit.*

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The initiative at the General Assembly was similar to an initiative at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 27 August - 7 September 1990), also led by Italy, for the adoption of a resolution inviting states which retain the death penalty to consider imposing a three-year moratorium on its use in order to permit a study of the effects of abolition. That resolution failed to secure the required two-thirds majority for adoption, although 48 votes were cast in favour of it with 29 against and 16 abstentions.¹⁶

7. DEATH SENTENCES AND EXECUTIONS

During 1994, 2,331 prisoners are known to have been executed in 37 countries and 4,032 sentenced to death in 75 countries. These figures include only cases known to Amnesty International; the true figures are certainly higher.

As in previous years, a small number of countries accounted for the vast majority of executions recorded. Amnesty International received reports of 1,791 executions in China, 139 executions in Iran and at least 100 in Nigeria. These three countries alone accounted for 87 per cent of all executions recorded by Amnesty International worldwide in 1994. Amnesty International received reports of several hundred executions in Iraq but was unable to confirm most of these reports or to give an exact figure.¹⁷

The increase over the number of executions recorded worldwide in 1993 (1,831) reflected an increase in executions recorded in China (1,419 in 1993). Until 1994, the annual number of executions recorded had seldom been higher than 2,100 or lower than 1,500 (it reached 3,278 in 1981, when Iran was carrying out large numbers of executions at a time of political conflict; decreased to the 700s in 1986 and 1987 when reported executions in Iran declined; and rose again in 1988 when Iran executed over 1,200 political prisoners). The number of countries known to have carried out executions each year since 1980 has ranged from 26 (in 1990) to 44 (in 1985); since 1988 it has not exceeded 37. The number of countries known to have carried out over 100 or more executions per year since 1984 has ranged from one (in 1993) to four (in 1984), and the proportion of executions recorded in those countries to the total executions recorded worldwide has varied from 56 per cent to 89 per cent over the same period. (**TABLE 2**)

8. MASS COMMUTATIONS

Historically, death sentences have been commuted not only in individual cases but also in groups, often in connection with general amnesties marking some special occasion.¹⁸

In March, King Hassan of Morocco commuted 196 death sentences to life imprisonment on the occasion

¹⁶Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August - 7 September 1990, UN document No. A/CONF.144/28, paragraphs 335-359.

¹⁷Amnesty International, "Death Sentences and Executions in 1994", AI Index: ACT 51/01/95, March 1995.

¹⁸See *When the State Kills...*, *op. cit.*, p. 74 for examples.
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of the 33rd year since his accession to the throne. Up to 10 other people sentenced to death reportedly awaited a review of their cases by the Supreme Court. No executions were carried out during the year.

After the election of a new government in Malawi in the first multi-party elections in the country for over 30 years, the new President, Bakili Muluzi, announced in his inauguration speech on 21 May the commutation of all outstanding death sentences - about 120 - to life imprisonment. During the year, trials of death penalty cases, which until October 1993 had been heard in "Traditional Courts" which did not provide fair trials, were transferred to the High Court. By the end of the year at least two people had been sentenced to death for murder. No executions were carried out during the year.

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**TABLE 1. NUMBER OF ABOLITIONIST COUNTRIES AT YEAR END,
1980 - 1994**

Year	No. countries abolitionist for all crimes	No. countries abolitionist in law or practice
1980	25	62
1981	27	63
1982	28	63
1983	28	64
1984	28	64
1985	29	64
1986	31	66
1987	35	69
1988	35	80
1989	39	84
1990	46	88
1991	46	83
1992	49	84
1993	53	90
1994	55	97

**TABLE 2. RECORDED WORLDWIDE EXECUTIONS BY YEAR,
1980 - 1994**

Year	No. countries carrying out executions	No. executions recorded	No. countries with over 100 executions (1984-1994)	% of all recorded executions carried out in countries with over 100 executions (1984-1994)
1980	29	1229		
1981	34	3278		
1982	42	1609		
1983	39	1399		
1984	40	1513	4	78%
1985	44	1125	3	66%
1986	39	743	3	56%
1987	39	769	3	59%
1988	35	1903	3	83%
1989	34	2229	3	85%
1990	26	2029	4	84%
1991	32	2086	2	89%
1992	35	1708	2	82%
1993	32	1831	1	77%
1994	37	2331	3	87%