

DEATH PENALTY

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A SUMMARY OF EVENTS ON THE DEATH PENALTY AND MOVES TOWARDS WORLDWIDE ABOLITION

INTERNATIONAL CRIMINAL COURT EXCLUDES DEATH PENALTY

The death penalty will not be among the punishments that can be imposed by the International Criminal Court which is to be established to try people accused of what are generally considered the most serious international crimes - genocide, other crimes against humanity and war crimes.

After four years of preparation, the Statute for a permanent International Criminal Court was adopted by government delegates on 17 July at a United Nations (UN) diplomatic conference held in Rome. Under Article 77 of the Statute, the maximum penalty which the Court can impose is life imprisonment.

At the insistence of about 10 states which were concerned that the Statute should not be seen as a general endorsement for the abolition of the death penalty, an article referring to national laws was added to the Statute. Entitled "Non-prejudice to national application of penalties and national laws", Article 80 states that "Nothing in this part of the Statute affects the application by States of penalties prescribed by their national law, nor the law of States which do not provide for penalties prescribed in this part." A similar statement was made orally by the President of the diplomatic conference.

Despite this provision, the implication of the exclusion of the death penalty from the Statute of the International Criminal Court is that the death penalty should not be used at all.

Under Article 6 of the International Covenant on Civil and Political Rights and other international human rights standards, the death penalty should be used only for the most serious crimes in countries which have not abolished it. If the use of the death penalty is excluded for the most serious crimes under international law, it can hardly be countenanced for lesser crimes.

The International Criminal Court will be set up once 60 states have ratified the Statute.

NEW EUROPEAN UNION POLICY TO PROMOTE ABOLITION

The 15-member European Union (EU) has adopted a far-reaching policy to promote the abolition of the death penalty in non-member states. The organization's General Affairs

Council adopted a declaration announcing the policy on 29 June.

The policy, entitled "Guidelines to EU Policy Towards Third Countries on the Death Penalty", sets out the EU's objectives as "to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states" and "where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards".

The EU will raise the issue of the death penalty in its dialogue with third countries. Particular consideration will be given to making demarches (diplomatic representations to governments) on the use of the death penalty at times at which a country's policy on the death penalty is in flux, for example, where an official or *de facto* moratorium on the death penalty is to be ended, or where the death penalty is to be reintroduced through legislation.

The EU will also encourage states to ratify and comply with international human rights instruments relating to the death penalty.

It will offer bilateral and multilateral cooperation with the aim of establishing a fair and impartial judicial process in criminal cases. It will also raise the issue in multilateral fora and work towards moratoria on the use of the death penalty and, in due course, abolition.

The EU will consider making specific demarches in individual death penalty cases which violate minimum standards as set forth in the policy. These standards correspond closely to established UN standards, including the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984. In addition, "the length of time spent after having been sentenced to death may also be a factor"; the death penalty "may not be carried out in public or in any other degrading manner"; and "the death penalty should not be imposed as an act of political revenge in contravention of the

minimum standards, e.g. against coup plotters".

UNITED KINGDOM - CONVICTION QUASHED

On 30 July the Court of Appeal quashed the conviction which led to the execution in 1952 of Derek Bentley, a 19-year-old epileptic with a mental age of 11, for a crime he did not commit. Public disquiet over his case had been a factor in the decision to abolish the death penalty in the 1960s.

Derek Bentley, together with a 16-year-old friend, were accused of shooting dead Police Constable Sidney Miles during an attempted robbery of a London warehouse in November 1952. Although Derek Bentley did not have a gun and was already restrained by police at the time of the shooting, the police claimed he was equally guilty of the crime because of something which he shouted to his friend. The friend could not be sentenced to death as he was too young at the time of the crime. Derek Bentley was convicted on 11 December 1952, his appeal turned down on 13 January 1953 and he was hanged two weeks later on 28 January.

Despite strong public opinion in favour of acquittal, both Bentley's lawyer and the presiding judge in the case were convinced he should hang. "The language used [by the presiding judge in the case] was not that of a judge but an advocate," Lord Chief Justice Bingham stated in quashing the conviction.

The Bentley family had campaigned for nearly 46 years to clear his name but their appeals to have the case reviewed were repeatedly refused, most recently in 1992. It was only after the Criminal Cases Review Commission took over the role of submitting appeal cases to the Court of Appeal that their efforts were vindicated. By then only Derek Bentley's niece was alive to receive the news.

PALESTINIAN AUTHORITY - FIRST EXECUTIONS

Two Palestinian brothers were executed on 30 August by firing squad in Gaza following their conviction for murder by a military court two days earlier. The death sentences were the first approved by the President of the Palestinian Authority government, Yasser Arafat, who also commuted the death sentence on their brother Faris. Muhammad and Ra'ed Abu Sultan, who were members of the Palestinian security forces, were found guilty of killing two brothers of another family in a private feud.

The executions were condemned by the Palestinian Human Rights Monitoring Group whose director, Bassem Eid, said that the crime had been committed on a Thursday, the sentences passed on Saturday and the executions carried out on Sunday. "They never had the opportunity to defend themselves or even to appoint lawyers", he stated.

The European Parliament, the parliamentary body of the European Union, passed a resolution on 17 September expressing regret over the executions and calling on the Palestinian Authority and the Palestinian Legislative Council to abolish the



death penalty.

PHILIPPINES JOURNEY OF HOPE

Concern is mounting that the first execution in the Philippines in more than 20 years may soon be carried out. The final appeal of Leo Echegaray, who was convicted in 1994 for the rape of his 10-year old stepdaughter, is under consideration by the Supreme Court. In an effort to prevent the reimposition of the death penalty a coalition of non-governmental organizations invited six members of the US-based group "Journey of Hope...from Violence to Healing" (JOH) to the Philippines in March to boost the efforts of local anti-death penalty activists and the Roman Catholic Church. JOH is led by murder victims' family members and those who have been victims of violent crime. Its members publicly share their experiences of moving from feelings of anger and revenge to forgiveness and support for abolition of the death penalty.

Leo Echegaray's mother meeting Journey of Hope members Bill Pelke, Lois Robison, SueZann Bosler and George White in the Philippines, March 1998.

NEWS IN BRIEF

China - AI has recorded 3,152 death sentences and 1,876 confirmed executions in China in 1997. These figures are based on public reports monitored by AI and are believed to be far below the actual numbers of death sentences and executions. The figures reveal a country which sentences over 60

people to death a week on average and has executed more people throughout the 1990s than the rest of the world combined.

The official Chinese news agency *Xinhua* claimed in February that China had greatly reduced death sentences since a revised Criminal Law came into force in October 1997. This assertion would have more credibility if it were accompanied by the figures and details of individual cases. Instead, national statistics on the death penalty remain a state secret in China.

El Salvador - The European Parliament adopted a resolution on El Salvador calling on the authorities not to extend the scope of the death penalty. This was in response to a request by Salvadorian President Armando Calderon to the Salvadorian Legislative Assembly to ratify a motion approved by the previous Assembly in October 1996, which would lead to a change in Article 27 of the 1983 Constitution extending the scope of the death penalty to crimes such as rape and violent killings (see **DP News** December 1996 and June 1997).

Japan - On 29 July a court in Kochi sentenced Sakamoto Haruno, a 71-year-old woman, to death for two separate cases of murder, including that of her husband, in an attempt to claim life insurance money. Ms Sakamoto is thought to be the oldest woman ever sentenced to death in Japan.

Three men were executed on 25 June after having spent more than 10 years under sentence of death in single cells with no contact with other prisoners and very limited contact with the outside world. Muratake Masahiro, Takeyasu Yukihiisa and Shimazu Shinji had been convicted of separate cases of robbery and murder. No prior warning of the executions was given to the prisoners' families or lawyers.

Russia - The Minister of Justice issued an official statement on 4 August that the Russian Federation will abolish the death penalty by April 1999 in accordance with the commitment which the country made on joining the Council of Europe in 1996. No official moratorium on executions has been put in place and although the authorities claim

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that no executions have taken place since August 1996, people continue to be sentenced to death. As of 30 April, according to official information, 894 prisoners were under sentence of death.

Tajikistan - The parliament adopted a new criminal code in June which reduces the number of crimes carrying a possible death sentence from 44 to 15. Under the new criminal code a death sentence can be commuted to 25 years' imprisonment. The new criminal code came into force on 1 September 1998.

Among the crimes which still carry the death penalty are murder, rape, terrorism, hijacking, drug trafficking and illegal cultivation of forbidden crops containing narcotic substances.

United Kingdom - A revised Criminal Justice Bill removing treason and piracy as capital crimes received royal assent in July. The death penalty is due to be abolished under military law in 2001 when the Armed Forces Act comes up for its periodic five-yearly renewal, as a result of which the UK will become abolitionist for all crimes.

UN Draft Convention on Disappearances - The death penalty has been excluded from the current text of an international draft Convention on the Protection of All Persons from Forced Disappearance. Article 5 of the draft requires that forced disappearances be punished with penalties commensurate with their extreme gravity but states that the death penalty "shall not be imposed in any circumstances". The draft was adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in

August and forwarded to the UN Commission on Human Rights for consideration at its next session, due to take place in early 1999.

Yemen - A decree by President Ali Abdullah Saleh, published on 3 August, provides for the "imposition of the death penalty for anyone who leads a band of kidnappers or bandits or who loots public or private property. Partners in crime will receive the same punishment".

Victims of Justice: The True Story of Two Innocent Men Condemned to Die and a Prosecution Out of Control by Thomas Frisbie and Randy Garrett, Avon Books, USA, ISBN 038079845X, price US \$6.99. Insight into how two men were wrongfully convicted in Illinois. Investigators and prosecutors in the case are due to be tried for official misconduct.

The presidential decree has immediate effect, although it can be overturned by parliament.

Executions in Yemen are usually by firing squad.

NEW BOOK

International Treaties

Costa Rica ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights on 5 June 1998 bringing the total of states parties to 33.

Estonia ratified Protocol No. 6 to the European Convention on Human Rights on 17 April, bringing the total of states parties to 28.

Latvia signed Protocol No. 6 on 26 June. Five states have now signed but not ratified the protocol.

Ecuador ratified the Protocol to the American Convention on Human Rights on 5 February bringing the total number of ratifications to six.