

G. Capital Punishment

Introduction

Since its foundation, the United Nations has continuously expressed its concern over the question of capital punishment.^{1/} The General Assembly, in its resolution 1396 (XIV) of 20 November 1959, invited the Economic and Social Council to initiate a study on capital punishment. Upon requests by the Council, the Secretariat prepared reports on capital punishment in 1962, 1967 and 1973.^{2/}

The General Assembly, in its resolution 2857 (XXVI) of 20 December 1971, affirmed that the main objective to be pursued in this area was that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries.

Capital punishment was also placed on the agenda of the Sixth Congress, during which some interesting debate took place.^{3/}

The Council, in its resolution 1745 (LIV) of 16 May 1973, requested the Secretary-General to submit periodic and analytical reports at five year intervals, starting from 1975. So far, five reports have been prepared.^{4/}

The Council, in its resolution 1983/24 of 26 May 1983, also requested the Committee on Crime Prevention and Control to further study the question of the death penalty that did not meet the acknowledged minimum legal guarantees and safeguards.

On the recommendation of the Committee at its eighth session, the Council, in its resolution 1984/50 of 25 May 1984, adopted the Safeguards guaranteeing protection of the rights of those facing the death penalty, on the understanding that they should not be invoked to delay or prevent the abolition of capital punishment.

The Safeguards cover the basic guarantees to be respected in criminal justice proceedings to ensure the rights of the offenders charged with a capital offence. They also state that capital punishment can be imposed only for the most serious crimes. They cover, *inter alia*, the right to benefit from lighter penalties under certain conditions and to appeal and to seek pardon; exemptions from capital punishment for persons below 18 years of age, pregnant women, new mothers and persons who have become insane; necessary evidentiary requirements and suspension of executions.

The Seventh Congress, in its resolution 15, invited those States retaining the death penalty to adopt the Safeguards and to take the necessary steps to implement them. The Congress also requested the United Nations Secretary-General to widely publicize them as well as the mechanisms for their implementation.

Progress on the implementation of the Safeguards is kept under review by the Economic and Social Council, through its Committee on Crime Prevention and Control. The Secretary-General prepared a report for the Committee on the implementation of the Safeguards.^{5/} A study on capital punishment was also prepared for the Committee by Professor Roger Hood.^{6/}

Recommendations regarding implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the Economic and Social Council in its resolution 1989/64 of 24 May 1989, proposed to Member States practical means by which to implement these safeguards and requested the Secretary-General, *inter alia*, to cover the question of the implementation of these safeguards in preparing its reports on capital punishment.

Further, the Council, in its resolution 1990/29 of 24 May 1990, requested the Committee on Crime Prevention and Control to keep the question of capital punishment under review and asked the Secretary-General to draw on all available data, including current criminological research, in its resolution 1990/51 of 24 July 1990, the Eighth Congress examined the question of capital punishment and considered the latest quinquennial on this issue.^{7/}

NOTES

- ^{1/} See, for example, Capital punishment, working paper prepared by the Secretariat (A/CONF.87/9).
- ^{2/} Capital Punishment (United Nations publication, Sales No.62.IV.2; Capital Punishment Developments, 1961 to 1965 (United Nations publication, Sales No. 67.IV.15) and E/5242.
- ^{3/} Report of the Sixth Congress (A/CONF.87/14/Rev.1).
- ^{4/} E/5616 and Corr.1 and 2 and ADD.1; E/1980/9, Corr.1, Add.1 and Add.1/Corr.1 and Add.2; E/1985/43, Corr.1; and

- E/1990/38/Rev.1 and Corr.1.
- 5/ E/AC.57/1988/9 and Corr.12.
- 6/ Roger Hood, "The Death Penalty", a world-wide perspective, special issue of the International Review of Criminal Policy (later published by Oxford Clarendon Press, 1989).
- 7/ E/1990/38/Rev.1 and Corr.1.

[33] **2857 (XXVI) Capital punishment**

The General Assembly,

Recalling its resolution 2393 (XXIII) of 26 November 1968 concerning the application of the most careful legal procedures and the greatest possible safeguards for the accused in capital cases as well as the attitude of Member States to possible further restriction of the use of capital punishment or to its total abolition,

Taking note of the section of the report of the Economic and Social Council⁵¹ concerning the consideration by the Council of report on capital punishment⁵² submitted by the Secretary-General in implementation of the afore mentioned resolution,

Taking note of Economic and Social Council resolution 1574 (L) of 20 May 1971,

⁵¹ Ibid., chap. XVIII, sect. C.

⁵² E/4947 and Corr. 1.

Expressing the desirability of continuing and extending the consideration of the question of capital punishment by the United Nations,

1. Notes with satisfaction the measures already taken by a number of States in order to ensure careful legal procedures and safeguards for the accused in capital cases in countries where the death penalty still exists;
2. Considers that further efforts should be made to ensure such procedures and safeguards in capital cases everywhere;

3. Affirms that, in order fully to guarantee the right to life, provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries;

4. Invites Member States which have not yet done so to inform the Secretary-General of their attitude to possible further restriction of the use of the death penalty or its total abolition, by providing the information requested in paragraphs 1 (c) and 2 of General Assembly resolution 2393 (XXIII);

5. Requests the Secretary-General to circulate as soon as possible to Member States all the replies already received from Member States to the queries contained in paragraphs 1 (c) and 2 of resolution 2393 (XXIII) and those to be received after the adoption of the present resolution, and to submit a supplementary report to the Economic and Social Council at its fifty-second session;

6. Further requests the Secretary-General, on the basis material furnished in accordance with paragraph 4 above by Governments of Member States where capital punishment still exists, to prepare a separate report regarding practices and statutory rules which may govern the right of a person sentenced to capital punishment to petition for pardon, commutation or reprieve, and to submit that report to the General Assembly.

**2027th plenary meeting,
20 December 1971.**

[34]1984/50. Safeguards guaranteeing protection of the rights of those facing the death penalty

The Economic and Social Council,

Having regard to the provisions bearing on capital punishment in the International Covenant on Civil and Political Rights,¹²⁰ in particular article 2, paragraph 1, and articles 6, 14 and 15 thereof,

Recalling General Assembly resolution 38/96 of 16 December 1983, in which, inter alia, the Assembly expressed its deep alarm at the occurrence on a large scale of summary or arbitrary executions,

Recalling also General Assembly resolution 36/22 of 9 November 1981, in which the Committee on Crime Prevention and Control was requested to examine the problem with a view to making recommendations,

Recalling further Council resolution 1983/24 of 26 May 1983, in which it decided that the Committee on Crime Prevention and Control should further study the question of death penalties that did not meet the acknowledged minimum legal guarantees and safeguards, and contained in the International Covenant on Civil and Political Rights and other international instruments, and welcomed the intention of the Committee that the issue should be discussed at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Acknowledging the work done by the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the areas of summary or arbitrary executions, including the reports of the Special Rapporteur,¹²¹

Considering the relevant views and comments of the Human Rights Committee

¹²⁰ General Assembly resolution 2200 A (XXXI), annex.

¹²¹ E/CN.4/1983/16 and Add.1 and Corr.1; E/CN.4/1984/29.

established under the International Covenant on Civil and Political Rights,

Expressing its concern at the tragic incidence of arbitrary or summary executions in the world,

Having considered the note by the Secretary-General on arbitrary and summary executions,¹²²

Guided by the desire to continue to contribute to the strengthening of the international instruments relating to the prevention of arbitrary or summary executions,

1. Takes note of the note by the Secretary-General on arbitrary and summary executions;

2. Again strongly condemns and deplors the

brutal practice of arbitrary or summary executions in various parts of the world;

3. Approves the safeguards guaranteeing protection of the rights of those facing the death penalty, recommended by the Committee on Crime Prevention and Control and annexed to the present resolution, on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment;

4. Invites the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders to consider the safeguards with a view to establishing an implementation mechanism, within the framework of the item of its provisional agenda¹²³ entitled "Formulation and application of United Nations standards and norms in criminal justice".

**21st plenary meeting
25 May 1984**

¹²² E/AC.57/1984/16.

¹²³ See Council resolution 1982/29, para. 1.

ANNEX

Safeguards guaranteeing protection of the rights of those facing the death penalty

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be

sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

5. Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights,¹²⁴ including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of

¹²⁴ General Assembly resolution 2200 A (XXI), annex.

sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

[35] 1989/64. Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty

The Economic and Social Council,

Recalling its resolution 1984/50 of 25 May 1984, in which it approved the safeguards guaranteeing protection of the rights of those facing

the death penalty,

Recalling also resolution 15 of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,⁹⁰

Recalling further section X of its resolution 1986/10 of 21 May 1986, in which it requested a study on the question of the death penalty and new contributions of the criminal sciences to the matter,

Taking note of the report of the Secretary-General on the implementation of the United Nations safeguards guaranteeing protection of the rights of those facing the death penalty,¹¹⁰

Noting with satisfaction that a large number of Member States have provided the Secretary-General with information on the implementation of the safeguards and have made contributions,

Noting with appreciation the study on the question of the death penalty and the new

¹¹⁰ E/AC.57/1988/9 and Corr.1 and 2.

contributions of the criminal sciences to the matter,¹¹¹

Alarmed at the continued occurrence of practices incompatible with the safeguards guaranteeing protection of the rights of those facing the death penalty,

Aware that effective implementation of those safeguards requires a review of relevant national legislation and the improved dissemination of the text to all persons and entities concerned with them, as specified in resolution 15 of the Seventh Congress,

Convinced that further progress should be achieved towards more effective implementation of the safeguards at the national level on the understanding that they shall not be invoked to delay or to prevent the abolition of capital punishment,

Acknowledging the need for comprehensive and accurate information and additional research about the implementation of the safeguards and the death penalty in general in every region of the world,

1. Recommends that Member States take steps to implement the safeguards and strengthen further the protection of the rights of those facing the death penalty, where applicable, by:

(a) Affording special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases;

(b) Providing for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence;

(c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

(d) Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage

¹¹¹ E/AC.57/1988/CRP.7.

of sentence or execution;

2. Invites Member States to co-operate with specialized bodies, non-governmental organizations, academic institutions and specialists in the field in efforts to conduct research on the use of the death penalty in every region of the world;

3. Also invites Member States to facilitate the efforts of the Secretary-General to gather comprehensive, timely and accurate information about the implementation of the safeguards and the death penalty in general;

4. Further invites Member States that have not yet done so to review the extent to which their legislation provides for the safeguards guaranteeing protection of the rights of those facing the death penalty as set out in the annex to Council resolution 1984/50;

5. Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information on the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on

appeal and the number of instances in which clemency has been granted, and to include information on the extent to which the safeguards referred to above are incorporated in national law;

6. Recommends that the report of the Secretary-General on the question of capital punishment, to be submitted to the Council in 1990, in pursuance of its resolution 1745 (LIV) of 16 May 1973, should henceforth cover the implementation of the safeguards as well as the use of capital punishment;

7. Requests the Secretary-General to publish the study on the question of the death penalty and the new contributions of the criminal sciences to the matter, prepared pursuant to Council resolution 1986/10, section X, and to make it available, with other relevant documentation, to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

**15th plenary meeting
24 May 1989**

[36] 1990/29. Capital punishment

The Economic and Social Council,

Recalling its resolutions 1745 (LIV) of 16 May 1973, 1930 (LVIII) of 6 May 1975, 1984/50 of 25 May 1984 and 1985/33 of 29 May 1985,

Recalling General Assembly resolutions 2857 (XXVI) of 20 December 1971, 32/61 of 8 December 1977 and 39/118 of 14 December 1984,

Having examined the fourth quinquennial report of the Secretary-General on capital punishment,⁷⁵ and having found certain imprecisions and errors in it, as recognized by the representative of the Secretary-General,

Aware that only forty-three Governments responded to the questionnaire sent by the Secretary-General requesting information for the preparation of the fourth quinquennial report,

1. Invites Member States to provide the Secretary-General with the information required for the preparation of the fifth quinquennial report on capital punishment, in 1995;

2. Takes note of the fact that during the period covered by the report of the Secretary-General some

countries have abolished capital punishment, others have adopted a policy of reducing the number of capital offences or have reported not imposing death sentences on offenders, while others have retained capital punishment;

3. Requests the Committee on Crime Prevention and Control to keep the question of capital punishment under review;

4. Requests the Secretary-General to submit to the Council for consideration at its second regular session of 1990, a revised version of the fourth quinquennial report;

5. Also requests the Secretary-General, in preparing the fifth quinquennial report, to draw on all available data, including current criminological research, and to invite the

⁷⁵ E/1990/38 and Corr.1.

comments of specialized agencies and intergovernmental and non-governmental organizations on this question.

**13th plenary meeting
24 May 1990**