

## DEATH PENALTY NEWS MARCH 1997

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

### UNITED NATIONS CALLS FOR HALT TO EXECUTIONS

In an historic act, the United Nations Commission on Human Rights has adopted a resolution encouraging states to suspend executions.

In other important developments, the Parliamentary Assembly of the Council of Europe condemned Russia and Ukraine for continuing to carry out executions, while in the United States of America the American Bar Association called for a moratorium on all executions in the country (see stories on page 2).

In resolution 1997/12, adopted on 3 April, the UN Commission on Human Rights called on countries which retain capital punishment "to consider suspending executions, with a view to completely abolishing the death penalty". The resolution also calls on all states that have not yet abolished the death penalty "progressively to restrict the number of offences for which the death penalty may be imposed".

The resolution, which was co-sponsored by Italy and 44 other countries, was adopted by a vote of 27 in favour and 11 against, with 14 abstentions. Seven amendments, incompatible with the spirit and letter of the resolution, were moved by Malaysia. They were the subject of separate votes and were all decisively defeated.

The idea of a moratorium on executions has been raised several times over the years at the UN but had always previously been blocked. Initiatives to adopt a resolution favouring a moratorium on executions failed at the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders in Caracas in 1980 and again in 1990 at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana in the face of opposition from retentionist countries.

Since then the notion of a moratorium has made remarkable progress elsewhere, notably in the Council of Europe, where the Parliamentary Assembly now considers that the willingness to introduce a moratorium on executions upon accession to the Council of Europe is a prerequisite for membership of the Council (see **DP News** June 1996).

In 1994 Italy again proposed calling for a moratorium on executions at the Third Committee of the UN General Assembly. That initiative failed in the face of a counter-proposal by Singapore and other retentionist states to amend the Italian resolution introducing language which could have undermined the principle of the universal applicability of international human rights standards.

The latest Italian initiative was strongly supported by Hands Off Cain, an international organization of members of parliament and others working for the abolition of the death penalty. **AI** also supported the effort.

As requested in the resolution, the UN Secretariat will prepare a yearly supplement to the UN quinquennial report on capital punishment (see **DP News** September 1995) covering changes in law and practice worldwide. The report will be considered at next year's session of the Commission on Human Rights.

### COUNCIL OF EUROPE CONDEMNS RUSSIA AND UKRAINE FOR CONTINUING EXECUTIONS

In an unprecedented move, the Parliamentary Assembly of the Council of Europe voted on 29 January to condemn Russia and Ukraine for violating their commitments to stop executions and threatened them with ultimate expulsion from the Council of Europe should executions continue (see **DP News** December 1996).

The condemnation came in two resolutions. Resolution 1111(1997) states that the Assembly "must condemn Russia for having violated her commitment to put into place a moratorium on executions, and deplores the executions that have taken place. It demands that Russia immediately honour her commitments and halt any executions of the death penalty still pending". The Assembly "warns the Russian authorities that it will take all necessary steps to ensure compliance with commitments entered into. In particular, should any more executions of the death penalty be carried out following the adoption of this resolution, the Assembly may consider the non-ratification of the credentials of the Russian parliamentary delegation at its next session". Ukraine was condemned in identical language in resolution 1112(1997). The two resolutions are the first stage in a process which could lead to expulsion.

Following the vote in the Parliamentary Assembly, Russian Federation President Boris Yeltsin instructed the Ministry of Foreign Affairs to ratify 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. The Ministry of Justice and other federal departments were advised to resolve any outstanding measures to allow ratification of the protocol, the government news agency ITAR-TASS reported.

In Ukraine the Ministry of Justice released figures on 29 January showing that 167 prisoners were executed in 1996, placing the country second only to China for the highest known number of executions in the world.

## **AMERICAN BAR ASSOCIATION DEMANDS US MORATORIUM ON EXECUTIONS**

The American Bar Association (ABA) has called for a moratorium on all executions in the United States until the processes by which the death penalty is administered can ensure greater fairness to defendants and minimize the risk of executing the innocent. The Association, which numbers about 370,000 members and is the United States' largest and most influential organization of lawyers, adopted a resolution on 3 February through its policy-making House of Delegates by 280 votes in favour to 119 against to seek an immediate halt to executions in the USA until the judicial process can be overhauled.

The resolution was adopted on the basis of a report which stated that "in case after case, decisions about who will die and who will live turn not on the nature of the offence the defendant is charged with committing, but rather on the nature of the legal representation the defendant receives". It urged the adoption of ABA guidelines to encourage competency of counsel in capital cases, the preservation and enhancement of state and federal courts' authority to exercise independent judgment on the merits of constitutional claims in state post-conviction and federal *habeas corpus* proceedings, the elimination of discrimination in capital sentencing on the basis of race of either the victim or the defendant, and the prevention of execution of the mentally retarded and people who were under the age of 18 at the time of the offence.

The resolution states that, apart from the ABA's existing policies relating to the mentally retarded and juveniles, the Association takes no position on the death penalty itself.

The call for a moratorium was supported by 20 of the past 24 presidents of the ABA and reflects the Association's concern following passage of two federal laws last year (see **DP News** March 1996) which severely limit the ability of federal courts to review state death penalty cases, and eliminate federal funding for lawyers working on death penalty appeals.

According to press reports, the US Department of Justice strongly opposed the ABA's action and urged delegates to vote against it, but former US Attorney General Benjamin Civiletti was quoted as saying that four in 10 death sentences appealed to federal courts on constitutional grounds are ultimately reversed.

## NEWS IN BRIEF

### Bosnia-Herzegovina

A Bosnian Serb soldier who was sentenced to death in 1993 for war crimes by a court in Bosnian government-controlled Sarajevo is pressing for a retrial. Sretko Damjanovi was convicted of killing the brothers Kasim and Asim Bleki and four other Muslims. In December 1996 he filed a request for a retrial after it was discovered that the brothers are alive and living in the Sarajevo suburb of Vogosca. Sretko Damjanovic, who claimed he had been coerced into making a confession, had been convicted largely on the testimony of a fellow soldier who had confessed to genocide and crimes against civilians while fighting for Serb forces around Sarajevo in 1992.

### Libya

Eight men were executed on 2 January for "passing defence secrets to foreign states" and membership of "a banned organization linked to agents of foreign governments". The six army officers and two civilians had been arrested in October 1993 and held incommunicado in unknown locations since that time; all their trials had been held secretly. **AI** denounced the executions as an outrage; the organization had repeatedly requested information about the prisoners' whereabouts and legal status but received no response from the Libyan authorities.

### North Korea

At least 23 public executions, including one of a woman, were carried out in the Democratic People's Republic of Korea between 1970 and 1992 according to testimonies given to **AI** from a variety of unconnected witnesses. Those executed were usually killed by hanging or shooting. The government denies carrying out public executions and claims there was only one execution, in 1992.

The death penalty is mandatory in North Korea for political offences such as activities "in collusion with imperialists aimed at suppressing the national-liberation struggle" and for "acts of betraying the nation to imperialists" and is also imposed on prisoners convicted of murder and other serious crimes. However, in some cases those executed had been convicted of non-lethal crimes such as theft and embezzlement. Witnesses informed **AI** that some of the prisoners executed showed signs of beatings which could indicate ill-treatment and torture during detention. (See *North Korea - Public Executions: Converging Testimonies*, AI Index: ASA 24/01/97)

### USA - Arkansas

On 8 January Arkansas carried out its second triple execution since the death penalty was restored in 1976. It is the only US state since 1976 to have executed three prisoners at once.

The three men, all convicted of murder, were executed by lethal injection over a three-hour period. Kirt Wainwright, the last of the three to be executed, received a temporary reprieve while already strapped down to receive the injection and had to wait in that position for about 40 minutes before learning that his appeal was rejected by the US Supreme Court, thus confirming his execution.

### Puerto Rico

A potential constitutional crisis is brewing in this abolitionist US territory following US Attorney General Janet Reno's authorization in March for prosecutors to seek the death penalty under federal law for an accused murderer on the island. Two additional requests for the death penalty were also submitted in March and four more are pending.

Puerto Rican Representative Jorge de Castro, a member of the Popular Democratic Party, submitted a resolution in the territory's legislature requesting the US Attorney General to declare Puerto Rico exempt from the death penalty. And the Reverend Moses Rosa, executive secretary of Puerto Rico's Evangelical Council, was quoted by Reuters news agency as pointing out that "both the Catholic and Protestant churches have strongly opposed the death penalty throughout the last century. That has only solidified the Puerto Rican consciousness against capital punishment." Puerto Rico abolished the death penalty for all offences in 1929 and enshrined the prohibition in its constitution's bill of rights in 1952. But members of the ruling New Progressive Party, which seeks statehood for Puerto Rico, claim that the Puerto Rican constitution is a federal document and that there is nothing to prevent federal imposition of capital

punishment in the territory.

## Zaire

Fourteen soldiers were sentenced to death for cowardice on 21 January in the northern town of Kisangani. Two other soldiers were sentenced to death on 7 February in Kisangani for the murder of a shopkeeper. This follows the announcement by General Likulia Bolongo, Zairean Minister of Defence, in January that the armed forces must rid themselves of criminals, runaways and pillagers who are to be punished by court-martials in a severe and spectacular manner. At least 20 officers of the armed forces accused of unspecified criminal activities are reported to be in custody awaiting trial.

## EXECUTIONS AT WORLD HIGH

Figures released by **AI** showed an unprecedented use of the death penalty worldwide in 1996. At least 4,272 prisoners were executed in 39 countries and 7,017 sentenced to death in 76 countries, the highest figures ever recorded by **AI**; the true figures are certainly higher. The leap in executions was due largely to China's increased use of the death penalty with more than 3,500 prisoners executed last year during its "strike-hard" anti-crime campaign.

Despite a 30 per cent increase over the 1995 worldwide execution figures, **AI** said it remains optimistic about the worldwide trend towards abolition. As of March, 58 countries had abolished the death penalty for all crimes, 15 had abolished it for all but exceptional offences and a further 26 countries were abolitionist *de facto*. See **AI**, *List of Abolitionist and Retentionist Countries*, AI Index: ACT 50/03/97; *Death Sentences and Executions in 1996*, AI Index: ACT 51/01/97. These two documents can also be accessed on **AI**'s web site, <http://www.amnesty.org/campaign/>

## BOOK REVIEWS

**The Death Penalty as Cruel Treatment and Torture** by William A Schabas, Boston, Massachusetts, Northeastern University Press, 1996, price \$50. William A. Schabas, Chair of the Department of Judicial Sciences at the University of Quebec at Montreal and author of *The Abolition of the Death Penalty in International Law*, has written a book examining the grounds for considering the death penalty to be a form of torture or cruel, inhuman or degrading treatment or punishment.

Professor Schabas notes that although international human rights instruments usually link the death penalty to the right to life, "judicial consideration of the death penalty has dwelt not so much on the right to life as on the prohibition of cruel treatment and torture. ... even where constitutional norms express the right to life in unqualified terms, many judges have puzzled over the scope of this enigmatic norm. Quite simply, they seem to have found it easier to address the question of the death penalty from the standpoint of the prohibition of cruel treatment or torture."

Schabas considers a number of related factors including the experience of being under sentence of death for long periods, methods of execution, arbitrariness, and public attitudes. His book is full of cases and court judgments from different parts of the world.

**Against Capital Punishment: The Anti-Death Penalty Movement in America, 1972-94** by Herbert Haines, New York, Oxford University Press, 1996, price \$35. This is a detailed account of the anti-death penalty movement in the United States over the past 20 years. It describes the work of abolitionist organizations, includes interviews with the movement's leaders, and analyzes the causes of the American public's support for the death penalty as well as suggesting methods for bringing about change.

## DEATH PENALTY NEWS INDEX 1996

COUNTRY		
DATE	SUBJECT	
Afghanistan	12/96	Prisoner publicly executed by victims husband

Albania	9/96	Death sentences passed despite moratorium
Andorra	6/96	Ratifies Protocol No. 6 to European Convention on Human Rights
Bahamas	6/96	First execution since 1984
Bahrain	9/96	First execution in nearly 20 years
Barbados	12/96	Death sentences commuted to life imprisonment
Belgium	6/96 9/96	Bill abolishing the death penalty passed by Chamber of Representatives Total abolition in Belgium
Belize	3/96	Legal rulings
Canada	9/96	Two men extradited to USA face possible death penalty
Chile	9/96	Chile debates abolition
China	6/96	AI calls on China to stop mass executions
Colombia	3/96	President intends to seek death penalty
Comoros	9/96	First execution since 1978
El Salvador	12/96	Constitutional amendment to reintroduce death penalty adopted by Legislative Assembly
France	3/96	Death sentence prisoner earns doctorate
Guatemala	9/96	Guatemala executes two men
Guyana	6/96	Execution carried out despite pending application before UN Human Rights Committee

Iran	9/96	Condemned prisoner pardoned; prisoner survives hanging
Italy	9/96	Constitutional Court rules extradition to face death penalty unconstitutional
Jamaica	12/96	Executions may resume
Japan	3/96	Kanto Federation of Bar Associations calls for immediate suspension of executions
Libya	6/96	Death penalty expansion
Macao	12/95	Abolition to continue
Macedonia	9/96	Signs Protocol No. 6 to European Convention on Human Rights
Moldova	3/96 9/96	Parliament votes for abolition Signs Protocol No. 6 to European Convention on Human Rights
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Philippines	3/96	
Lethal injection approved as method of execution		
Poland	9/96	Parliament rejects draft law to lift moratorium on executions
Russia	3/96 6/96 12/96	Russia pledges moratorium on executions Council of Europe demands cessation of executions Executions continue in Ukraine and Russia
South Africa	3/96 6/96 9/96	South Africa prepares constitution Constitution upholds death penalty ban Calls to reinstate death penalty
South Korea	12/96	Constitutional court rules death penalty a "necessary evil"
Sudan	6/96	Death sentences for armed robbery
Taiwan	3/96	Death sentences may have been based on confessions extracted under torture

Thailand	3/96	First execution since 1987
Trinidad and Tobago	12/96	Move to overturn Pratt and Morgan ruling
Ukraine	6/96 12/96	Council of Europe demands cessation of executions Executions continue in Ukraine and Russia
USA	3/96 3/96 6/96  9/96 9/96 12/96	Developments on the death penalty New law restricts death penalty appeals New York - "Declaration of Life" document devised by abolitionists Oregon - first execution in 34 years Illinois - Death row prisoners freed Georgia - prisoner executed after courts refuse to consider new evidence Virginia - Reprieve in O'Dell case
Zimbabwe	3/96	First execution since 1988
Book Reviews	6/96  9/96	<u>Rituals of Retribution - Capital Punishment in Germany 1600-1987</u> by Richard J Evans <u>Un errore capitale - Il dibattito sulla pena di morte</u> by Antonio Marchesi <u>The Death Penalty: A Worldwide Perspective</u> by Roger Hood <u>Capital Punishment: Global Issues and Prospects</u> by Peter Hodgkinson and Andrew Rutherford (eds.)
International Treaties on Death Penalty	3/96 12/96	Signatories and states parties as of 1 January 1996 Signatories and states parties as of 1 January 1997
Constitutional Prohibitions of the Death Penalty	6/96	AI study
Council of Europe	3/96 6/96 12/96	Committee of Ministers calls for moratorium on executions in member states Council demands cessation of executions in Russia, Ukraine Death penalty discussed at seminars
UN	3/96 9/96 12/96	Special Rapporteur urges abolition for drug offences ECOSOC adopts resolution tightening death penalty safeguards Special Rapporteur calls for abolition
ACP-EU	12/96	Resolution

Civiltà Cattolica	9/96	Jesuit publication opposes death penalty