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on the death penalty from the point of view of international conventions and resolutions

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THE DEATH PENALTY FROM THE POINT OF VIEW OF INTERNATIONAL CONVENTIONS AND RESOLUTIONS

The international importance of the death penalty

The death penalty, which falls within regulations governing criminal law and procedure and which is today often included in constitutional law, has not always been taken into consideration under international law. On the contrary, on the basis of the principle of 'non-interference in internal affairs', a state could exclude all other states and the international community as a whole from any matter falling within the sphere of its own sovereignty.

Under contemporary international law, however, following important changes, the question of capital punishment has come to the fore in the context of the international safeguarding of human rights. Since the Universal Declaration of Human Rights in 1948, the individual has been considered not only as simply a 'foreigner' (in other words, as someone falling within the sovereignty of another international subject), but as an individual, and states have undertaken reciprocally, through international agreements, to treat all individuals, beginning with their own citizens, in a certain way. The increased cooperation between states in a wide range of areas, and in particular in the criminal field through the extradition procedure, also has a bearing on capital punishment. These are the areas in relation to which the question of capital punishment is dealt with in international conventions and resolutions. It must be remembered, however, that from the legal point of view, the death penalty is still to a large extent regulated by the state.

The death penalty and the right to life: the objective of abolition

Article 3 of the Universal Declaration of Human Rights states that 'Everyone has the right to life, liberty and security of person'. It was in the context of the right to life that the death penalty was debated in the preparatory work for the Declaration. Those who felt that the text should expressly state that the death penalty violates the right to life were decidedly in a minority, and at the end of the discussion it was decided that the death penalty would not be mentioned at all in the Declaration. This decision was also based on the wish to leave the details of each of the provisions to be dealt with under the binding agreements already planned. Let us now review the various conventions in chronological order, keeping (for reasons of space) to global and European developments.

The European Convention on Human Rights of 1950 is the first general binding agreement on human rights. While it does include the right to life (Article 2), it explicitly excludes the death penalty from the enforcement of such right, and sets no limit on the possibility of carrying out the death sentence.

The International Covenant on Civil and Political Rights, 1966, however, which was intended to translate some of the principles enshrined in the Universal Declaration into legal obligations, stipulates in Article 6 that:

- '1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. (...)
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or prevent the abolition of capital punishment by any State Party to the present Covenant.'

By referring in Article 6(2) to countries which have not yet abolished the death penalty, the Covenant therefore implies approval of those countries which have abolished it. Paragraph 6 also states that nothing in Article 6 may be interpreted in such a way as to prevent or delay the abolition of capital punishment. Also, in a 'general comment' in 1982, the Human Rights Committee, the organ responsible for interpreting the provisions of the Covenant, states that the tone of Article 6 'strongly suggests that abolition is desirable' and that 'abolition is a progress in the enjoyment of the right to life'. In short, the abolition of the death penalty, which is not yet obligatory under international law, is nevertheless perceived as an objective to be pursued, however gradually. The objective of abolition is also reiterated, from 1971 onwards, in successive resolutions (which have a purely exhortatory value) of the United Nations General Assembly.

Limitations on the use of the death penalty

The establishment of the objective of abolition has not been without practical consequences, since it has been pursued, gradually, through the introduction of a series of limitations on the use of capital punishment. The international, universal and regional agreements in this area show that the limits fall into three categories:

A. Limits relating to the nature of the crime for which the death penalty is prescribed. Article 6 of the Covenant on Civil and Political Rights and Article 4 of the American Convention on Human Rights stipulate that capital punishment may be imposed 'only for the most serious crimes'. The guarantees for those who risk death by capital punishment adopted by the United Nations Economic and Social Council (ECOSOC) in 1984 (resolution 1984/50 of 2 May 1984) state that these 'should not go beyond intentional crimes, with lethal or other extremely grave consequences'. The 'general comment' of the Human Rights Committee already quoted above clearly states that capital punishment must be considered as 'quite an exceptional measure'.

The death penalty clearly may not be imposed except in respect of a crime for which such a punishment was expressly laid down at the time it was committed. A separate and more problematic question is the possible ban on the reintroduction of capital punishment for a crime for which it had been abolished. Such a ban is explicitly included in the American Convention on Human Rights (Article 4(2)). It is uncertain, however, whether such an interpretation may be drawn from the wording of Article 6 of the Covenant on Civil and Political Rights.

Finally, the death penalty must in no case imply the violation of other human rights and therefore may not be imposed, for example, for a crime of opinion. Only under the American Convention is it also banned for political crimes.

B. Limits relating to the procedure followed before reaching a sentence of death. According to Article 6 of the Covenant on Civil and Political Rights, the death penalty may only be imposed following a fair trial pursuant to Article 14 of the Covenant. This involves respecting, at least, in the words of the Human Rights Committee 'the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal'. The guarantees formulated in 1984 by the United Nations Economic and Social Council already quoted above also state that the death penalty 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'. In other words, a particularly rigorous proof of guilt is called for. Article 6(4) of the Covenant (followed in this by Article 4(6) of the American Convention) stipulates that anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Only the American Convention, however, specifically states that capital punishment shall not be imposed while such a petition for pardon or commutation is pending decision.

C. Limits relating to the person sentenced. The idea that persons below eighteen years of age cannot have reached complete maturity and may therefore not be considered fully responsible in the same way as adults has resulted, in the field of human rights, in a corresponding ban on the death penalty for persons under this age. The Covenant on Civil and Political Rights, the American Convention and the guarantees of the United Nations Economic and Social Council all include provisions to this effect. The American Convention also states that capital punishment shall not be imposed on persons who, at the time the crime was committed, were over 70 years of age.

The Covenant on Civil and Political Rights states that the death sentence shall not be carried out on pregnant women. The United Nations guarantees of 1984 extend this ban to mothers during the first months of their child's life.

Finally, it is held in many quarters that the death penalty should never be imposed on people who are seriously mentally deficient or disturbed. The ECOSOC guarantees of 1984 include a provision to this effect.

International rules providing for the abolition of the death penalty in peacetime

The most significant development, which goes beyond simply pinpointing the objective of abolition, first came about in Europe. An initiative which began in 1978 resulted in 1983 in the adoption of the Sixth Protocol to the European Convention on Human Rights, the first international treaty (therefore legally binding, even though within a limited geographical area) to provide for the abolition of the death penalty in peacetime. The Sixth Protocol entered into force in 1985 and has been ratified by 16 Member States of the Council of Europe and by 3 other countries (source: Amnesty International, Death Penalty News, February 1991).

A similar development also occurred more recently at world level. In 1989 the United Nations General Assembly adopted (by 59 votes to 26, with 48 abstentions) the Second Optional Protocol to the International Covenant on Civil and Political Rights. This was the positive outcome of many years of discussion within the United Nations, in which the 'abolitionist' states still form a minority. The Second Protocol has now been signed by 21 states and ratified by 11. It entered into force in June 1991.

The death penalty and the right not to suffer cruel, inhuman or degrading punishment

Many consider that besides constituting a violation of the right to life, the death penalty may also violate another fundamental and inalienable human right, i.e. the right not to suffer cruel, inhuman or degrading punishment. This right is included in all the main human rights agreements and, according to most scholars, may also now be covered by an international consuetudinary rule, binding on all states.

Some countries have explicitly stated, during the most recent sessions of the United Nations Commission on Human Rights, that they consider capital punishment to constitute a serious violation of the above right. At European level, however, there has been a more significant development in this direction. In 1989, in connection with the case of Soering v the United Kingdom, the European Court of Human Rights ruled that the extradition of an individual from a State Party to the European Convention on Human Rights to a country in which, in all probability, he would be sentenced to death, would be in violation of Article 3 of the Convention (which concerns inhuman or degrading treatment or punishment). In fact the Court did not consider the death sentence itself or its execution as determining factors so much as the circumstances which would more or less inevitably accompany it (in particular the long and uncertain wait on 'death row' and the relative conditions of imprisonment). The theory that the death penalty itself also violates the right not to be subjected to inhuman or degrading punishment was set out in a memorandum submitted to the Court by Amnesty International, and is supported by a minority of opinion.

The death penalty and cooperation between states: the problem of extradition for capital offences

Before concluding, it is important to point out the other means by which the death penalty may be taken into consideration under international law, i.e. penal cooperation between states through extradition. When considered in the context of the protection of fundamental rights, the choice to abolish the death penalty appears to be a decision to accept and promote a potentially universal value and not a decision relating to the penal system of an individual state. It may follow that if a state which still has the death penalty asks an 'abolitionist' state to extradite an individual who would as a consequence risk being sentenced to death in the first state, the second state could stipulate the condition that the individual in question should not be sentenced to death (or that the sentence should not be carried out), and, if this condition is not accepted, could refuse to extradite him.

Article 11 of the European Convention on Extradition of 1957 includes a rule which allows an exception, in the case of capital punishment, to the general obligation to extradite:

'If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that the death penalty will not be carried out.'

It is not possible here to go further into the problems which could arise with respect to the 'sufficient assurances' that a death sentence will not be issued or the death penalty not carried out. It is important to note, however, that, while it has been impossible so far to impose an obligation to abolish the death penalty via the adoption of an international agreement, some 'abolitionist' states have nevertheless in this way been able to some degree to extend the effects of their contrary position beyond the limits of their own jurisdiction.

SITUATION ON THE RATIFICATION AND SIGNING OF INTERNATIONAL CONVENTIONS ON THE DEATH PENALTY

Sixth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty

Signatures and ratifications (situation at 31 December 1991)

- Belgium	has signed	has not ratified
- Cyprus	<u>has not signed</u>	"
- Greece	has signed	"
- Hungary	has signed	"
- Ireland	<u>has not signed</u>	"
- Turkey	<u>has not signed</u>	"
- United Kingdom	<u>has not signed</u>	"

European Convention on Extradition

Article 11 states as follows: Death penalty: 'If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death penalty will not be carried out'.

Signatures and ratifications (situation in December 1990)

- Belgium	has signed only
- United Kingdom	has signed only
- Malta	<u>has not signed</u>
- Hungary	<u>has not signed</u>
- San Marino	<u>has not signed</u>

All the other Member States of the Council of Europe have signed and ratified. Israel has acceded.

The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (adopted by the United Nations General Assembly on 15 December 1989 by 59 votes to 26 with 48 abstentions) entered into force in June 1991 following the tenth ratification.

Signatures and ratifications (situation at 31 December 1991)

11 countries have ratified the Protocol:

- Australia
- Finland
- Germany
- Iceland
- Netherlands
- New Zealand
- Norway
- Portugal
- Romania
- Spain
- Sweden

10 countries have signed:

- Austria
- Belgium
- Costa Rica
- Denmark
- Honduras
- Italy
- Luxembourg
- Nicaragua
- Uruguay
- Venezuela

THE ARGUMENTS FOR AND AGAINST THE DEATH PENALTY

General considerations concerning the debate on the death penalty

The theoretical debate between those who support the death penalty and those in favour of abolition is relatively recent. The legitimacy of capital punishment was not in fact called into question by philosophers and lawyers until the eighteenth century.

The debate is rendered even more difficult by the fact that the various arguments are based on different axiological suppositions which are difficult to compare. Thus ethical arguments and utilitarian arguments are put forward and mixed together in the discussion. In other words, on the one hand the question is whether the death penalty is ethically justified or not, and on the other hand whether it is useful or necessary to achieve a certain end. This obviously involves two separate questions which depend on two different criteria of judgement, which may in their turn lead to different but not necessarily contradictory conclusions (the death penalty may be considered, at least in theory, as 'just but not useful' or 'useful but not just', or 'just and useful' or 'neither just nor useful'). In any case, it follows that there is no real dialogue, and it should come as no surprise that the debate has not reached any final conclusion. Despite this, however, the 'abolitionist' side tends to prevail in the long run among scholars and those in politics and government.

It should be noted, to clarify the context in which the debate takes place, that the different positions are not only linked to the different concepts relating to the purpose of punishment but also to the different concepts of society and the state and their respective advocates. There is no doubt that the organic concept of Aristotle and St Thomas Aquinas according to which the 'parts' may be sacrificed for the good of the 'whole' has provided the supporters of capital punishment with an important argument. On the other hand it is no accident that the first arguments against capital punishment put forward by Cesare Beccaria originated in the context of an individualist ideology.

The death penalty and human rights

In the first part of this report it has been seen how, since the end of the Second World War, capital punishment has been considered as a possible violation of internationally protected human rights. It would seem appropriate to stick to the same starting point. The debate surrounding the death penalty cannot in fact be separated from the subject of fundamental rights. In the first place there is the right to life, the enjoyment of which is instrumental to the enjoyment of all other rights. It is a matter of discussion, from the legal and philosophical point of view, whether capital punishment constitutes an exception to the enjoyment of this right.

The abolitionist argument of the inevitable cruelty of capital punishment has developed more recently so that it now also embraces the right not to be subjected to torture or cruel, inhuman or degrading treatment.

Finally, it has been rightly pointed out that the death penalty can sometimes be a means or one of the means through which other rights are violated (such as the right to freedom of opinion or expression where it is decided to 'eliminate' a non-violent political opponent by execution) or an aggravating factor of other violations (for example where the death penalty is imposed following an unfair trial).

Let us, however, consider capital punishment from the point of view, by far the most prevalent, of the right to life. The question is whether capital punishment can constitute an exception to the general principle, i.e. whether it can be deemed a homicide 'with just cause'. It is the existence of the exception (the 'just cause') and not the general principle (not to take life) which must be demonstrated. It is in this way that the debate has proceeded.

Arguments in favour of capital punishment and counter-criticism

The death penalty as a possible exception to the enjoyment of the right to life is firstly justified, in general terms, on the grounds of legitimate defence by the state against the criminal. But does it make sense to claim that the state can act in legitimate self defence against an individual? According to the abolitionists the death penalty has neither the prerequisites nor the characteristic features of legitimate self defence. On the one hand, the state, which has the monopoly of force, has at its disposal alternative punishments (and alternative means to combat crime). On the other hand, a death sentence imposed following a trial is no longer an immediate response to the crime, but premeditated legal homicide.

Let us move to the specific area of criminal law. In this context the position on capital punishment is in general the result of a choice between the various theories on the purpose of punishment. Those who support the theory of punishment as retribution usually also support the death penalty. It is claimed in fact that it is 'just', irrespective of whether it is necessary or useful. Opponents of capital punishment win, however, with reference to the utilitarian theory of punishment as a deterrent, since the death penalty has never been able to prove either its usefulness or its necessity. From the point of view of the criminal, the theory of retribution corresponds with the theory of expiation, which is if nothing else compatible with the death penalty. The utilitarian theory of reparation, however, is quite incompatible with a position in favour of capital punishment. Again, we are confronted with a difficult comparison between different basic values.

Let us consider the various aspects in turn, beginning with the question of whether the death penalty has a dissuasive effect which would justify its retention. An initial intuitive response may be that it does, but further reflection, though based only on common sense and with no claim to scientific rigour, could lead to the opposite conclusion. In many cases of homicide or crimes which may be - and often are - committed through passion or fear or under the effects of alcohol or perhaps by persons who are mentally unstable, it would seem unlikely that the murderer was able to calculate with a clear head the consequences of his act before committing it. In cases where the criminal does actually consider the possible consequences of his crime, it is likely that he believes he has a good chance of not being discovered or arrested. In other words, it would be the uncertainty of the punishment and not its lightness which would reduce the deterrent effect.

Among the scientific studies carried out on the deterrent effect of capital punishment, which are numerous but not all beyond criticism at a methodological level, the first important research carried out for the United Nations in 1962 (the so-called Ancel Report) reached the conclusion that: 'All the information available appears to confirm that such a removal (of the death penalty) has, in fact, never been followed by a notable rise in the incidence of the crime no longer punishable with death'. And more than 25 years later in 1988, the UN Committee on Crime Prevention and Control further stated that, though it does not appear to be possible to reach definitive conclusions because of the large number of variables to be taken into consideration, 'the fact that all the evidence continues to point in the same direction is a priori evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty'.

There must be some doubt, however, whether such studies can really reach convincing conclusions and significantly influence policy decisions. This is the conclusion of the most recent and authoritative commentators, including the committee of experts in various fields which was commissioned to compile an objective technical assessment of these studies by the National Academy of Sciences USA in 1975. The most recent study on capital punishment carried out for the United Nations (the Hood report, 1991), also expresses the opinion that the diversity of political or moral convictions tends to re-emerge in the assessment of evidence. The abolitionists would presumably maintain, according to Hood, that the death penalty must have a considerably greater deterrent effect than other forms of punishment in order for its retention (or reintroduction) to be taken seriously into consideration, while those in favour of capital punishment would be content with less rigorous evidence. The conclusion of the report is, however, that the balance of evidence tends towards those who support the abolition of the death penalty.

If, therefore, the question of the death penalty is considered exclusively from the point of view of its deterrent effect, the abolitionists would seem to have the greater number of valid arguments. No dissuasive effect seems in fact to have been proved. On the contrary, there are commentators and scholars who argue that capital punishment could even increase the incidence of violent crime because of the 'brutalizing' effect it would have. We will not examine this theory since, as has been shown, it seems sufficient to be able to state with certainty that the case for the 'just cause' exception has not been argued successfully. Nor will we go further here into the observation, from authoritative quarters, that the use of the death penalty would have the effect of distracting from the planning of measures which are really effective in the fight against crime.

The argument on the lack of deterrent effect also has a weak side, however, or at least a limit. If it were possible to demonstrate that, perhaps at a given moment and in certain given circumstances, capital punishment really had a dissuasive effect, the entire abolitionist theory would crumble. This is not a minor objection, but in fact the debate is never conducted on a single front, and each assessment must therefore be based on all the considerations put forward.

The difficult problem of recidivists also comes into play in decisions on the usefulness or necessity of capital punishment. There is no doubt that the execution of a death sentence prevents the criminal from repeating his crime. This is obviously not the problem under discussion. The first question is to what extent and on what time-scale is it possible to establish that a criminal

will commit the same type of crime again. And the other question is, once again, what alternative means there are to prevent this happening. Various important studies point out that it is extremely difficult to make predictions, especially in the long term, on the repetition of crime. Others suggest that this tends to be very low in relation to 'capital' offences (taking into consideration in particular the instances of homicides in the United Kingdom and the United States). However, there are also cases of murderers sentenced to many years of imprisonment who, on their release, have killed again. To sum up, the supporters of capital punishment see it as a certain way of preventing brutal criminals from continuing to cause suffering. The abolitionists see this as a system of justice which can be criticized on the grounds that it relies on irrevocable measures based on very uncertain predictions (thus 'pointlessly' sacrificing a large number of human lives) and thus demonstrates its inability to prevent crime via more acceptable means.

Moving from the utilitarian to the ethical, the question is asked whether the death penalty is 'just'. On the basis of the retribution theory, supported amongst others by Kant and Hegel, the purpose of punishment is to dispense justice (and not to prevent crime). On these grounds, the death penalty is justified as a punishment which perfectly fits the crime (obviously in the case of murder). This thesis, which is in fact very little in evidence among the arguments put forward by political leaders in favour of the retention or reintroduction of the death penalty, is countered by the fundamental idea of the inalienability of human rights. According to the retribution theory, a person who kills deserves to be killed. But fundamental rights cannot be denied an individual simply because he has committed a crime, however brutal. The very idea of fundamental human rights rests on their inalienability and conflicts, at least in the case which directly interests us, with the idea of retributive justice. If certain individuals 'deserve' the death penalty, it is not clear why - still according to the theory in question - others could not 'deserve' to be tortured or imprisoned without trial.

In fact the ethical argument for abolition, based on the inalienability of certain fundamental human rights, not only counters the retribution theory but also with the arguments based on the alleged usefulness or necessity of punishment, and therefore simply adds to the opposing abolitionist arguments (which maintain that the death penalty is not useful) without making them conclusive.

The argument on the inalienability of human rights would seem to be strengthened by certain other considerations. It is questionable whether there could ever be a system of justice capable of deciding who - supposing for the sake of argument that it is 'just' - deserves to be punished with death, that is a punishment (in a certain sense the only punishment) which is irreversible. The possibility of mistakes, which exists to a certain extent - even though it is sometimes minimal - in all legal decisions, is not compatible, according to the abolitionists, with an irreversible punishment.

There is another consideration. All too often, and the reports by Amnesty International fully document the phenomenon, the decision as to who will be put to death and who will be reprieved does not depend solely on the crime committed, but also on the social and the ethnic origin of the criminal, on his financial means and his political views. In such circumstances, in view of the possibility of error and the spread of ethnic, political, social and economic discrimination, it would seem more than ever inappropriate to entrust anyone with the power to impose the definitive punishment of death.

There is one final point which should be mentioned, which lies outside the subject, which almost all the arguments in favour of or opposed to the death penalty, the right to life and possible exceptions to its enjoyment have come up against, i.e. the question of the cruelty (or 'harshness') of capital punishment.

The point made is that it is impossible, despite every effort, to conceive a system of carrying out the death penalty which is not cruel and degrading for the condemned person. None of the methods in current use can guarantee rapid and certain death without other effects before the victim finally dies.

Furthermore, the length of time between the passing of the death sentence and execution is often very long (generally for understandable reasons, such as the need to follow a particularly rigorous procedure). The condemned person is caught between the hope of life and the need to prepare for death, with all the psychological and emotional suffering this involves.

There is a parallel between this abolitionist thesis and the development we discussed in the section dealing with international conventions whereby capital punishment is also seen from the point of view of the right not to be subjected to torture or cruel, inhuman or degrading punishment. Both shift the terms of the question onto different ground from that of the traditional debate for and against the death penalty.

THE DEATH PENALTY IN THE WORLD

The development of the legal and de facto situation regarding the provision and application of the death penalty in the world reveals a highly contradictory pattern.

While it is true that on the one hand the establishment of the right to life as a fundamental right laid down in international treaties is the result of a change of feeling and the gradual establishment of an abolitionist trend, it should nevertheless not be forgotten that more than half the countries in the world still have the death penalty on their statute books and that even in the last decade there has been evidence of negative developments both in terms of legal statutes and in public opinion.

The prevalence of an abolitionist tendency has had various consequences. In the first place, some states have chosen total abolition, while others have kept it only for exceptional crimes (such as those committed in wartime).

In the second place, even in states which still have the death penalty there has been a gradual 'delegitimization' which has been demonstrated by;

- (a) a tendency not to carry out the death sentence (de facto abolition), including indefinite suspensions of the sentence or the application of clemency in all cases;
- (b) the reduction, though with exceptions which we will indicate, of the number of offences punishable by death, limitation of the crimes for which the death penalty is obligatory and, in general, the tendency to provide for a series of circumstances in which it cannot be imposed or carried out.

On the other side of the coin, it should be pointed out that some states have increased the number of offences punishable by death and that it is still frequently applied without the guarantees and procedures expressly laid down in all the international human conventions on human rights.

Essential data on the death penalty in the world

That being said, we propose to give an outline of the situation regarding the death penalty in the world, using information updated in January 1991.

96 states retain and use the death penalty for ordinary crimes, which is over half the countries which currently make up the international community. None of the Community Member States is among these (Annex 1).

According to information provided by Amnesty International, in 1990, 2029 executions took place in 26 countries, and 2005 death sentences were passed in 54 countries. The real figures are certainly higher, since not all governments make death sentences public and since so-called 'extra-judicial' executions should be taken into consideration.

20 countries, which are considered 'abolitionist de facto' have not executed anyone for the last 25 years, even though the death penalty is still on their statute books (also for non-exceptional crimes). It should be pointed out that death sentences have been passed even recently in some of these countries. Community de facto abolitionist states are Belgium and Greece (Annex 2).

16 states have abolished the death penalty except for exceptional crimes such as crimes under military law or crimes committed in wartime. There are three Community Member States among these (Italy, the United Kingdom and Spain) (Annex 3).

49 states have abolished the death penalty for all crimes. 7 of these are Community Member States, and another 13 are European non-Community states. 11 are in Latin America, 8 in Oceania, 3 in Africa and 2 in Asia (Annex 4).

Since 1976, 35 countries have abolished the death penalty: some only for ordinary crimes, others for all crimes and others have extended abolition already in force for ordinary crimes to include exceptional crimes. In 1991 five countries (Anguilla, Cayman Islands, British Virgin Islands, Montserrat, and Turks and Caicos Islands) abolished the death penalty for all offences, while Nepal abolished the death penalty for ordinary offences (Annex 5).

At the end of last year, the Hungarian Constitutional Court ruled that the death penalty violates the right to life and dignity as laid down in the country's constitution. The Irish parliament recently voted to abolish capital punishment for its three remaining capital offences. Finally, still in Europe, the Turkish National Assembly decided on 29 November 1990 that capital punishment would be abolished for 16 of the offences for which it is prescribed. The death penalty still remains obligatory in Turkey for many other crimes.

The situation in the United States is controversial; the death sentence is provided for under federal law and the laws of 37 states, while it has been abolished in 13 states. After a suspension from 1962 to 1976, following a decision by the Supreme Court that the death penalty was not unconstitutional,

if applied under certain conditions, capital executions began again, and over 130 people have been put to death and more than 2000 are currently on 'death row'.

While a certain abolitionist tendency has grown in strength in recent years, especially thanks to the greater level of democracy achieved in many countries, it should also be noted that as a result of political upheaval or campaigns to repress certain crimes, many states have increased the number of offences punishable by death.

At the end of 1990 the President of Pakistan extended the provision of the death penalty to kidnapping, previously punishable by life imprisonment. Also at the end of 1990, the Parliament of the Maldives decided to include terrorism among the crimes punishable by death. No death sentences have been carried out in the Maldives since 1952, however.

Efforts to check the growth of drug trafficking have led many countries to include this crime among the offences punishable by death or to make the death penalty obligatory for this crime where it was a possible option. Ten states have introduced the death penalty for drugs-related crimes in the last ten years, bringing the total number to 24. Since a new law against drugs came into force in Iran in 1989, over 1600 people have been sentenced to death and executed. In Malaya, since 1983 when the death penalty was made obligatory, more than 100 people have been put to death and another 200 are in prison awaiting death for drugs trafficking.

In 1989 Egypt carried out its first death sentence for drugs trafficking. According to data provided by Amnesty International, 750 official executions were carried out in China in 1990 (the actual figure seems to be around 12,000): this is the highest figure since 1983 when, following the introduction of a widespread campaign against crime, around 10,000 executions were carried out.

There have been signs of a revived temptation to resort to the death penalty within the Community. Following particularly serious crimes there have been movements not only in public opinion but also in various political sectors towards the restoration of the death penalty.

More significant and worrying is the fact that among the countries which retain and use the death penalty for ordinary crimes there are some which persist in applying it to crimes or to individuals or in ways for which its use is prohibited under the international conventions.

In the first place, several states have the death penalty on their statute books (and use it) for a large number of crimes which certainly do not belong in the category of 'most serious crimes'. Furthermore, there have been cases, even recently, of the retroactive application of the death penalty (for example in Nigeria for ordinary crimes and in Iran for political crimes), and cases where for certain crimes the death penalty has been replaced by a less severe punishment, but those who had already been sentenced to death for such crimes have not been reprieved (in certain states of the United States of America).

With regard to the categories of persons normally excluded from the application and/or execution of the death penalty, while the great majority of statutes prohibit its use for persons under 18 at the time the crime was

committed, 8 minors were nevertheless put to death in the 1980s (one in Bangladesh, one in Barbados, three in Pakistan and three in the United States). It should also be borne in mind that there is no data on the executions of minors which have certainly taken place in Iran and Iraq.

The death penalty has also been carried out on very elderly people in recent years. Mahmoud Mohamed Taha, the seventy-six-year-old leader of an Islamic organization was hanged in Sudan in 1985. In the USSR in 1987, seventy-eight-year-old Fiodor Fedorenko was condemned to death and executed for war crimes. Again in 1987, this time in Japan, ninety-five-year-old Sadamichi Hirasawa died in prison of pneumonia. He had been awaiting execution for 37 years, and had made 17 appeals for the case to be re-opened, all of which were rejected.

It is difficult to establish how many people of diminished mental capacity have been condemned to death and executed in recent years. There are in fact doubts about the criteria to be applied in ascertaining diminished mental capacity, and also difficulties in finding the relevant data. It is known, however, that since 1984 at least 6 people with very reduced mental capacity and another 5 who were psychologically disturbed have been put to death in the United States.

Violation of guarantees to trial

One very serious aspect pointed up by many Amnesty International reports, and to which insufficient attention has often been paid, is the right to a fair trial. In the late 1980s in no less than 37 countries the death penalty was imposed either by special tribunals or on the basis of unfair proceedings. This means that over the last ten years, thousands of people have been put to death following a trial with no guarantees.

Even today in certain countries accused persons are not given the opportunity to prepare any sort of defence by presenting witnesses or providing evidence in their favour, and sometimes the onus is on the accused to prove his innocence.

Often trials, especially those involving political opponents accused of threatening national security, are held in secret, with no possibility of any observation by independent organizations or by the public.

Another guarantee which is denied or made extremely difficult by some regulations is the right to appeal against a death sentence, especially when passed by tribunals set up under special laws or by military tribunals.

We will give only a few examples. The Islamic Revolutionary Courts in Iran have often passed the death sentence for political crimes, without the accused being allowed any assistance in his defence or given leave to appeal against the sentence, and, in certain cases, after a trial lasting only a few minutes. The Iranian Penal Code states that even for crimes punishable by death, guilt may be proven solely on the basis of the sworn testimony of 'virtuous men', which may not be contested by the accused.

In Guinea there have been cases of people being condemned without having appeared before a court, or even people put to death without having been aware of ever undergoing a 'trial'. In Afghanistan, the law makes no provision for any form of counsel for the defence in trials for 'anti-state' or 'counterrevolutionary' activities which are heard before the Special Revolutionary Courts. There have been cases of trials without any form of defence also in Iraq, Ghana, Liberia and Rwanda. On some occasions in Turkey the counsel for the defence has been appointed immediately before the trial, and therefore with no time to prepare a proper defence.

In Iraq, trials before the Special Courts are, in the majority of cases, heard in camera, with the accused granted no right to bring forward witnesses or provide evidence in his defence. The death sentence has often been passed on the basis of confessions extorted through torture.

In China, particularly since the introduction of new measures against the spread of crime in 1983, accused persons, including those accused of capital offences, are denied the right to receive a copy of the charges before the trial, there is no provision for the presumption of innocence and the right to a defence, though recognized under the law, is in practice not guaranteed. There have been reports of trials in which only six to eight days have passed between arrest, the passing of the death sentence and execution.

Crimes punishable by death

In the majority of states which retain the death penalty, it is used mainly, if not exclusively, for murder. According to Amnesty International, of the 63 countries which carried out the death penalty between 1985 and mid-1988, 25 were using it solely for people convicted of murder.

The overall range of capital offences is fairly wide. According to the most recent United Nations study (the Hood Report, 1990), for the period 1984-1987, 22 countries carried out the death penalty for crimes against the state, 10 countries for terrorist offences, 12 for sex crimes, 15 for offences against property (in 7 of these countries for offences relating to finance) and 6 countries for crimes related to drugs trafficking.

In many countries governed by Islamic law, capital punishment is used for many activities related to sexual behaviour or religious beliefs, the legal position of which is vague and arbitrary. In Iran, for example, the death penalty is imposed for 'corruption on earth' and for being an 'enemy of God', as well as a series of other crimes, some of which are considered immoral, such as incest, adultery, sexual relations between a Muslim woman and a non-Muslim man, sodomy, prostitution, the consumption of alcohol (if habitual) and all crimes against the internal and external security of the state.

In the People's Republic of China the death penalty may be imposed for an extremely large number of crimes, both political and ordinary, and is considered a necessary measure to prevent anti-socialist influences and disorder in the system. Apart from so-called 'counterrevolutionary' crimes such as treason, hi-jacking of aircraft, plotting to overthrow the government and the organization of secret reactionary societies, a number of 'economic' crimes are also punishable by death, including smuggling, corruption and the illicit export of cultural goods, along with other offences such as murder, kidnapping, robbery, drugs trafficking, rape, pimping and the printing and display of pornographic material. Executions are public, and often before being put to death condemned prisoners are paraded through the streets on the back of open lorries with signs around their necks describing their crimes.

It is also reported that over roughly the same period capital punishment has been used not only for crimes involving violence but also for adultery (Iran and Saudi Arabia), prostitution (Iran), keeping a brothel and showing pornographic films (China), corruption (USSR) and embezzlement (China, Ghana and Somalia).

Methods of execution

There are currently seven methods of execution in use: hanging, firing squad, the electric chair, the gas chamber, lethal injection of poison, decapitation and stoning. The first two are the most common, hanging being the method laid down by law in 78 countries and execution by firing squad in 86 countries. The electric chair, gas chamber and lethal injection are used only in the United States (with variations from state to state). Sex crimes are punished under Islamic law by decapitation (in five countries) and by stoning (in seven countries). The use of the guillotine, which is still on the statute books in Zaïre and Belgium, is obsolete.

The causes of death and the time taken to die (and therefore the extent of suffering) depend on the method used and the degree of expertise in carrying it out.

In practice, however, according to the press and evidence gathered by humanitarian organizations, even the most sophisticated methods have sometimes failed to work, thus prolonging intolerably the suffering of the condemned person.

This information further reinforces the arguments of those who maintain that besides violating the right to life, the death penalty is also a form of torture and/or cruel, inhuman and degrading punishment.

Before concluding, however, it is important to stress one other point. The suffering experienced by a condemned prisoner is not only the physical pain endured at the time of execution. From the time he is sentenced to death he is forced to continue his existence in the knowledge that his life will be ended at a pre-arranged moment and, if there is the chance of an appeal, to live in conflict between the hope of survival and the need to prepare for the possibility of imminent death.

THE DEATH PENALTY AND PUBLIC OPINION

Separate mention should be made of public opinion on the question of abolition of the death penalty.

While among philosophers and legal scholars and, on the whole, also among those involved in government the abolitionists seem to be in a majority, the same is not true with regard to the general 'public feeling'. Numerous surveys carried out on this subject show a wide gap between public opinion and the theoretical debate.

In some countries, public opinion has been cited in support of the need to retain the death penalty on the statute books, sometimes even by politicians or government officials who say that they are personally opposed to it. This particular 'anti-abolitionist' argument can, however, be criticized on several counts.

In the first place, as the Italian philosopher Norberto Bobbio rightly points out, in the case of a choice between good and evil, such as that relating to the death penalty, the majority principle cannot be asserted. Furthermore, still on the subject of principles, if the death penalty is considered as a possible violation of an inalienable human right (whether the right to life or the right not to be subjected to cruel, inhuman or degrading punishment), no importance can be attached to public opinion in its favour.

In fact, the surveys are often not very convincing, given the changeability of public opinion in the light of events affecting the emotions. In the United States and Spain, for example, it has been found that the number of people in favour of capital punishment altered considerably when surveys were carried out after episodes of terrorist violence.

In some cases, it should also be borne in mind that the answers given by the public are often based on information which may be incomplete, misleading or even wrong. In Japan, a survey carried out in 1967 by the Prime Minister's Office revealed that 71% of those questioned considered it right to retain the death penalty. However, 61% of these believed that the special effectiveness of the death penalty as a deterrent had been clearly demonstrated, and 74% believed, wrongly, that the number of brutal crimes was on the increase.

A study carried out in 1975 in a university town in the United States showed that following more information on the subject, the number of people in favour of the death penalty went down considerably.

To sum up, then, for reasons of principle and for reasons relating to the changeable nature of public opinion and the frequent lack of correct information available to the public, it does not seem wise to rely on opinion polls on the death penalty. Clearly there does seem to be a need, however, to promote detailed information campaigns both on the aspects relating to the violation of the most important human right, the right to life, by the state, and also on the particular cruelty of the death penalty, its irreversibility and its ineffectiveness as a deterrent measure to combat the rise in crime rates.

RETENTIONIST

(Countries and territories which retain and use the death penalty for ordinary crimes)*

Country

AFGHANISTAN	INDIA	SAINT LUCIA
ALBANIA	INDONESIA	SAINT VINCENT AND THE GRENADINES
ALGERIA	IRAN	SAUDI ARABIA
ANGOLA	IRAQ	SIERRA LEONE
ANTIGUA AND BARBUDA	JAMAICA	SINGAPORE
BAHAMAS	JAPAN	SOMALIA
BANGLADESH	JORDAN	SOUTH AFRICA
BARBADOS	KENYA	SUDAN
BELIZE	KOREA (Democratic People's Republic)	SURINAME
BENIN	[North Korea]	SWAZILAND
BOTSWANA	KOREA (Republic)	SYRIA
BULGARIA	[South Korea]	TAIWAN (Republic of China)
BURKINA FASO	KUWAIT	TANZANIA
BURUNDI	LAOS	THAILAND
CAMEROON	LATVIA	TONGA
CENTRAL AFRICAN REPUBLIC	LEBANON	TRINIDAD AND TOBAGO
CHAD	LESOTHO	TUNISIA
CHILE	LIBERIA	TURKEY
CHINA (People's Republic)	LIBYA	UGANDA
CONGO	LITHUANIA	UNION OF SOVIET SOCIALIST REPUBLICS
CUBA	MALAWI	UNITED ARAB EMIRATES
DOMINICA	MALAYSIA	UNITED STATES OF AMERICA
EGYPT	MALI	VIET NAM
EQUATORIAL GUINEA	MAURITANIA	YEMEN
ESTONIA	MAURITIUS	YUGOSLAVIA
ETHIOPIA	MONGOLIA	ZAIRE
GABON	MOROCCO	ZAMBIA
GAMBIA	MYANMAR	ZIMBABWE
GHANA	NIGERIA	
GRENADA	OMAN	
GUATEMALA	PAKISTAN	
GUINEA	PAPUA NEW GUINEA	
GUINEA-BISSAU	POLAND	
GUYANA	QATAR	
	RWANDA	
	SAINT CHRISTOPHER AND NEVIS	

Total: 96 countries and territories

* Most of these countries and territories are known to have carried out executions during the past 10 years. On some countries Amnesty International has no record of executions but is unable to ascertain whether or not executions have in fact been carried out.

ABOLITIONIST DE FACTO

(Countries and territories which retain the death penalty for ordinary crimes but have not executed anyone during the past 10 years or more)

<u>Country</u>	<u>Date of Last Execution</u>
BAHRAIN	1977
BELGIUM	1950
BERMUDA	1977
BHUTAN	1964*
BOLIVIA	1974
BRUNEI DARUSSALAM	1957
COMOROS	**
COTE D'IVOIRE	**
DJIBOUTI	**
GREECE	1972
HONG KONG	1966
MADAGASCAR	1958*
MALDIVES	1952*
NAURU	**
NIGER	1976*
PARAGUAY	1928
SAMOA, WESTERN	**
SENEGAL	1967
SRI LANKA	1976
TOGO	

TOTAL: 20 countries and territories

* Date of last known execution

** No executions since independence

ABOLITIONIST FOR ORDINARY CRIMES ONLY

(Countries whose laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances such as wartime)

<u>Country:</u>	<u>Date of Abolition</u>	<u>Date of Last Execution</u>
ARGENTINA	1984	
BRAZIL	1979	1855
CANADA	1976	1962
CYPRUS	1983	1962
EL SALVADOR	1983	1973*
FIJI	1979	1964
ISRAEL	1954	1962
ITALY	1947	1947
MALTA	1971	1943
MEXICO		1937
NEPAL	1990	1979
PERU	1979	1979
SEYCHELLES		**
SPAIN	1978	1975
SWITZERLAND	1942	1944
UNITED KINGDOM	1973	1964

TOTAL: 16 countries

* Date of last known execution

** No executions since independence

ABOLITIONIST FOR ALL CRIMES

(Countries whose laws do not provide for the death penalty for any crime)

<u>Country</u>	<u>Date of Abolition</u>	<u>Date of Abolition for Ordinary Crimes</u>	<u>Date of Last Execution</u>
ANDORRA	1990		1943
ANGUILLA			
AUSTRALIA	1985	1984	1967
AUSTRIA	1968	1950	1950
BRITISH VIRGIN ISLANDS			
CAMBODIA	1989		
CAPE VERDE	1981		1935
CAYMAN ISLANDS			
COLOMBIA	1910		1909
COSTA RICA	1877		
CZECH AND SLOVAK FEDERATIVE REPUBLIC	1990		1988
DENMARK	1978	1933	1950
DOMINICAN REPUBLIC	1966		
ECUADOR	1906		
FINLAND	1972	1949	1944
FRANCE	1981		1977
FEDERAL REPUBLIC OF GERMANY	1949/1987***		1949***
HAITI	1987		1972
HONDURAS	1956		1940
HUNGARY	1990		1988
ICELAND	1928		1830
IRELAND	1990		1954
KIRIBATI			..
LIECHTENSTEIN	1987		1785
LUXEMBOURG	1979		1949
MARSHALL ISLANDS			..
MICRONESIA (Federated States)			..
MONACO	1962		1847
MONTSERRAT			
MOZAMBIQUE	1990		1986
NAMIBIA	1990		1988*
NETHERLANDS	1982	1870	1952
NEW ZEALAND	1989	1961	1957
NICARAGUA	1979		1930
NORWAY	1979	1905	1948
PANAMA			1903*
PHILIPPINES	1987		1976
PORTUGAL	1976	1867	1849*
ROMANIA	1989		1989
SAN MARINO	1865	1848	1468*
SAO TOME AND PRINCIPE	1990		..
SOLOMON ISLANDS		1966	..
SWEDEN	1972	1921	1910
TURKS AND CAICOS ISLANDS			..
TUVALU			..
URUGUAY	1907		..
VANUATU			..
VATICAN CITY STATE	1969		
VENEZUELA	1863		

TOTAL: 49 countries

* Date of last known execution

** No executions since independence

*** The death penalty was abolished in the Federal Republic of Germany (FRG) in 1949 and in the German Democratic Republic (GDR) in 1987. The last execution in the FRG was in 1949; the date of the last execution in the GDR is not known. The FRG and the GDR were unified in October 1990. The name of the unified country is the Federal Republic of Germany.

LIST OF COUNTRIES WHICH HAVE ABOLISHED THE DEATH PENALTY SINCE 1976

- 1976: PORTUGAL abolished the death penalty for all offences.
CANADA abolished the death penalty for ordinary offences.
- 1978: DENMARK abolished the death penalty for all offences.
SPAIN abolished the death penalty for ordinary offences.
- 1979: LUXEMBOURG, NICARAGUA and NORWAY abolished the death penalty for all offences.
BRAZIL, FIJI and PERU abolished the death penalty for ordinary offences. (1)
- 1981: FRANCE abolished the death penalty for all offences.
- 1982: The NETHERLANDS abolished the death penalty for all offences.
- 1983: CYPRUS and EL SALVADOR abolished the death penalty for ordinary offences.
- 1984: ARGENTINA and AUSTRALIA abolished the death penalty for ordinary offences. (2) (3)
- 1985: AUSTRALIA abolished the death penalty for all offences. (3)
- 1987: The PHILIPPINES, HAITI, LIECHTENSTEIN and the GERMAN DEMOCRATIC REPUBLIC abolished the death penalty for all offences.
- 1989: CAMBODIA, NEW ZEALAND and ROMANIA abolished the death penalty for all offences.
- 1990: ANDORRA, the CZECH AND SLOVAK FEDERATIVE REPUBLIC, HUNGARY, IRELAND, MOZAMBIQUE, NAMIBIA and SÃO TOMÉ AND PRÍNCIPE abolished the death penalty for all offences.
NEPAL abolished the death penalty for ordinary offences. (4)
- 1991 ANGUILLA, CAYMAN ISLANDS, BRITISH VIRGIN ISLANDS, MONTSERRAT and TURKS AND CAICOS

(1) Brazil had abolished the death penalty in 1882 but reintroduced it in 1969 while under military rule.

(2) Argentina had abolished the death penalty for all offences in 1921 and again in 1972 but reintroduced it in 1976 following a military coup.

(3) In 1984 the death penalty was abolished in Western Australia, the last Australian state to retain the death penalty for ordinary offences. In 1985 it was abolished entirely in Australia when the state of New South Wales abolished it for piracy, treason and arson at military and naval establishments - the only remaining capital offences.

(4) Nepal had abolished the death penalty for murder in 1946 but reintroduced it in 1985 after bomb explosions in which several people were killed.

MOTION FOR A RESOLUTION (B3-0605/89)

by Mr ARBELOA MURU, Mr ALVAREZ DE PAZ and Mr BRU PURON
pursuant to Rule 63 of the Rules of Procedure

on abolition of the death penalty in the United States of America

The European Parliament,

- A. deeply concerned at the United States Supreme Court's recent decision, by five votes to four, not to consider unconstitutional the execution of sixteen- and seventeen-year-old criminals and of the mentally retarded,
 - B. whereas since the restoration of the death penalty in the United States of America in 1976, at least 111 people have been executed,
 - C. whereas in 33 of the 37 States where capital punishment is legal, there are another 2200 people on death row,
 - D. having regard to the Supreme Court ruling in 1972, to the many State governors who have not carried out death sentences during their terms of office, and the resolutely abolitionist attitude of many prominent people and of large sections of public opinion,
 - E. convinced that capital punishment serves no useful penal purpose, runs counter to the widely accepted view that it is possible to rehabilitate offenders, does not protect society, does nothing to ease the suffering of the victims, is irreversible and may be carried out on innocent people (at least 23 such may have been executed in the United States this century),
1. Calls on President George Bush of the United States of America and on the US Congress to take the steps necessary for the total abolition of the death penalty, beginning by not carrying out the executions that are pending and subsequently commuting all death sentences.

MOTION FOR A RESOLUTION (B3-0682/90)

by **Mr de VRIES**

pursuant to Rule 63 of the Rules of Procedure

on the abolition of the death penalty in the world

The European Parliament,

- A. whereas the death penalty is a violation of fundamental human rights, is imposed arbitrarily and irrevocably and has not reduced crime more effectively than other punishments or stopped political violence,
- B. deploring the fact that the use of the death penalty is still frequent and widespread, as illustrated by Amnesty International, which recorded nearly 16 000 executions in over 80 states during the 1980s,
- C. recalling its resolutions of 18 June 1981 and 17 January 1986,
 1. Calls on the Member States meeting in political cooperation to intervene systematically in cases of imminent executions throughout the world, and to promote ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, the first universal human rights instrument to abolish the death penalty;
 2. Calls on Belgium, Ireland and the UK to ratify the Sixth Protocol to the European Human Rights Convention;
 3. Instructs its delegations to express the Parliament's opposition to capital punishment in their contacts with parliaments of states that have not abolished it;
 4. Recommends its competent committee to draft a study on abolishing the death penalty worldwide;
 5. Instructs its President to forward this resolution to the Council and the Ministers meeting in political cooperation.

MOTION FOR A RESOLUTION (B3-1915/90)

pursuant to Rule 63 of the Rules of Procedure
by Mr ARBELOA MURU

on the death penalty in the world

The European Parliament,

- A. having regard to its resolutions of 1981¹ and 1986² on the death penalty,
 - B. welcoming the abolition of the death penalty in recent years in a large number of countries, especially in Central and Eastern Europe,
 - C. regretting the fact that there are still Member States which have not abolished it completely,
 - D. regretting the fact that the world's two most powerful nations, the US and the USSR, still apply it in many cases,
1. Calls on the Foreign Ministers meeting in Political Cooperation to hold a special meeting to discuss the measures which could be taken by the Community in all fields to work towards the abolition of the death penalty worldwide.

¹ Doc. 1-65/81 - OJ No. C 172, 13.7.1981, p. 72

² Doc. A2-167/85 - OJ No. C 36, 17.2.1986, p. 214