

## **Preface – Moving towards universal abolition of the death penalty**

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*The death penalty – Beyond abolition* is a fundamental work which bears witness to the strategic role of the Council of Europe's institutions in the move towards the universal abolition of the death penalty. The credit given is only fair, so vital has their action been in this enduring campaign, and so vital does it remain. The book also throws up some exciting ideas for increasing the effectiveness of the efforts to achieve abolition in those democratic countries which still apply the death penalty. It is clear that, as we move towards universal abolition, this work can play a useful role.

### **The whole continent of Europe freed from the death penalty**

In not much more than fifty years, the continent of Europe has been turned into a death penalty-free area. When the Council of Europe was set up, in 1949, most member states still had the death penalty on their statute book. The prevailing mindset in Europe at the time is clear to anyone who reads the Convention for the Protection of Human Rights and Fundamental Freedoms, which was adopted in 1950. Paragraph 2 of Article 2, on the right to life, reads: "Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary". This tolerance, however, could only be temporary, as the articles by Roger Hood and Eric Prokosch show.

Certain European states decided to take the first steps, then the process of eliminating capital punishment accelerated. The death penalty was abolished in Finland and Germany in 1949, in Austria in 1968, in the United Kingdom in 1969, in Sweden in 1972, in Portugal in 1976, in Luxembourg in 1979 and in France in 1981.

Backing up the efforts of most of its member states, the Parliamentary Assembly of the Council of Europe took the initiative of drafting a Protocol to the Convention concerning the abolition of the death penalty. After years of discussions, the now celebrated Protocol No 6 was adopted on 28 March 1983. For abolitionist Europe, this was a watershed. Article 1 of the Protocol reads: "The death penalty shall be abolished.

No one shall be condemned to such penalty or executed". The protocol came into force as early as 1985, enabling western Europe to close the door on capital punishment. As it takes precedence over member states' domestic law, the option of reversing their relevant legislation has no longer been available to them since that date.

The fundamental political changes which occurred after the Berlin Wall came down led to a second campaign against the death penalty, directed towards the new member states of the Council of Europe in central and eastern Europe. This presented a test for the superior values upheld by the Council of Europe, first and foremost the right to life. It was precisely at that juncture that the organisation had to make a new "profession of faith" in favour of abolition, looking beyond the already precious instrument which existed in the form of Protocol No 6. The Parliamentary Assembly again shouldered its responsibilities when, in 1994, it adopted Resolution 1044, linking membership of the Council of Europe to abolition of the death penalty, firstly *de facto* (obligation for any acceding state to adopt a moratorium on executions) and then *de jure* (signature, followed by ratification, of Protocol No 6 within three years). This second stage of the campaign for abolition was as productive as the first – and more rapid – and the Russian Federation is the only one of the forty-five current member states which has not yet *de jure* abolished capital punishment. But it has *de facto* dropped the death penalty, and abolition seems inevitable in the next few years. Thus we have, in a period of barely ten years, seen the disappearance of statutorily imposed death for ordinary crimes throughout the continent of Europe, a fact to which Hans Christian Krüger's splendid article bears witness.

Thus one last stage remained, that of the abolition of capital punishment in all circumstances. This is the purpose of a recent addition to the Convention, Protocol No 13, signed by thirty-six member states in Vilnius on 3 May 2002. It came into force on 1 July 2003 and has, to date (start February 2004), been ratified by twenty-two countries.

In a stronger position thanks to its own progress, Europe can make its voice heard well beyond its own borders, and it is doing so by every possible means, particularly through the case-law of the European Court of Human Rights and the untiring efforts of the Parliamentary Assembly. Thus, while numerous states which still carry out the death penalty regard the issue as an exclusively internal matter, the Parliamentary Assembly of the Council of Europe has always advocated a different interpretation: where the death penalty is concerned, the principle which must be applied is that any person under a state's jurisdiction must benefit from human rights and fundamental freedoms, which have had an international dimension for many years now. Caroline Ravaud has written an outstanding article on this aspect.

The Parliamentary Assembly continues to try to turn Europe and its institutions into a “death penalty-free zone”, so it has tried to persuade the non-member states which enjoy observer status with the Council of Europe as a whole, and the national parliaments which hold observer status with just the Assembly itself, that they, too, should engage in discussions with a view to abolition of the death penalty. On the basis of a report of the Committee on Legal Affairs and Human Rights, the Assembly, on 25 June 2001, adopted Resolution 1253 (2001) on the abolition of the death penalty in the countries enjoying observer status with the Council of Europe. Combining, as is its wont, an educational role and a firm stance, the Parliamentary Assembly is thus engaged in a dialogue with MPs of the two states concerned, the United States and Japan, trying to persuade them to abolish capital punishment. What is more, the Assembly has decided that it will not, in future, recommend that the Council of Europe grant observer status to any states which have not abolished the death penalty. Renate Wohlwend’s article takes a very detailed look at the subject.

### **The march towards universal abolition**

Fortunately, it is not only in Europe that this irresistible movement towards the universal abolition of the death penalty is under way.

The countries which have abolished capital punishment are now in the majority. As of 1 January 2003,<sup>1</sup> 112 countries had abolished capital punishment *de facto* or *de jure*. Abolition applied to all crimes in 76 of these, but only to ordinary crimes in another 15, and the other 21 were no longer implementing death sentences. On the same date, there were 83 countries where executions were still carried out.

Over the past ten years, in particular, an average of more than three countries a year have been abolishing the death penalty. Since 1990, over 30 countries worldwide have abolished it for all crimes. Among them are African states such as Angola, Ivory Coast, Mauritius, Mozambique and South Africa, countries of the Americas, including Canada and Paraguay, Asian representatives such as Hong Kong and Nepal, and east European and Caucasian countries including Azerbaijan, Bulgaria, Estonia, Georgia, Lithuania, Poland, Turkmenistan, Yugoslavia, Serbia and Montenegro, Turkey and, most recently, Armenia.

We must not ignore the particularly dark clouds which hang over some areas, with certain countries having a dreadful record where the death penalty is concerned, foremost among these being China.

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1. Source : Amnesty International, 2002 report, Internet publication : [www.amnesty.org](http://www.amnesty.org)

The figures are eloquent : at least 1 526 executions were carried out in some thirty-one countries in 2002,<sup>2</sup> with 81% of these taking place in China (1 060), Iran (113), Saudi Arabia and the United States (71). Since 1990, seven of the countries which still make use of capital punishment have executed persons who were minors when they committed their offence,<sup>3</sup> the sorry record in this respect being held by the United States, with 17 such executions since 1990.

The continuing use of the death penalty in the United States undeniably constitutes a longstanding obstacle to the final phase of universal abolition, in which the democracies which respect fundamental rights would present a united front against the totalitarian states. For, in the last analysis, once public opinion within the various democratic systems has finally been won over, the death penalty will remain inextricably linked to dictatorship and totalitarianism alone. It should be remembered that 877 people have already been executed since 1976 in the thirty-eight US states which have reinstated the death penalty, with almost 3 700 people still on death row. Yet opinions are changing in the United States, too, with 107 prisoners since 1976 already having succeeded in proving their innocence after being sentenced to death. And the death row cells of Illinois have been completely emptied following Governor Ryan's decision to commute all death sentences. The Supreme Court is again becoming more rigorous in its interpretation of the prohibition under the US Constitution of "cruel and unusual punishments" (8th Amendment). Hundreds of convictions are now being set aside by federal Courts of Appeal as the Supreme Court's case-law evolves. Therefore it is now vital to continue to support America's pro-abolition movements. In this context, Peter Hodgkinson's article about associations of victims and their families and Hugo Adam Bedau's about the situation in respect of the death penalty in the United States provide valuable food for thought.

Japan also occupies a particular place on the sad list of countries committed to capital punishment. It is another great democracy which not only continues to make use of the death penalty, but also treats those who have been sentenced to death with particular inhumanity. The oldest subject of a death sentence, for instance, died in July 2003 at the age of 86, having spent thirty-three years in solitary confinement on death row, not knowing as each day dawned whether it would be his last, and aware that neither his family nor his lawyers would be informed in advance of his execution date. Since a *de facto* moratorium came to

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2. These figures only include cases of which Amnesty International was aware for that year. According to Amnesty, the actual figures are certainly higher.

3. Saudi Arabia, United States, Iran, Nigeria, Pakistan, Democratic Republic of Congo and Yemen.

an end in 1993, forty-three people have been executed, mostly outside the period of parliamentary sessions, to avoid a reaction from parliament and a public backlash. Anyone who reads Yoshihiro Yasuda's article on the subject will gain deeper insight into Japan's specific situation.

Among all the other states of the world, none now carries out the death sentence with such intensity as the People's Republic of China. More people are executed there than anywhere else in the world, following trials which are parodies of justice, supposedly conducted to combat corruption or drugs trafficking, but looking more like part of a social cleansing process.

Islamic states such as Iran and Saudi Arabia also make assiduous use of the death penalty, readily invoking Koranic law, Sharia, as justification. They are clearly trying to conceal under the cloak of religion a barbaric practice. Of course the Koran's message of peace, like that of other religions' holy books, does not consider the death penalty to be a necessary part of the justice system.

Truth to tell, all these states are in fact subjected to totalitarian regimes which impose an official political, and sometimes religious, ideology. There is an indissoluble link between dictatorship and death penalty. All dictatorships make use of the death penalty, because it is the ultimate expression of the absolute power that the rulers wield over their subjects. The pale light cast by dictatorship is enough to reveal the true features of the death penalty, which is intrinsically totalitarian.

Thus the fight for universal abolition takes on a doubly liberating dimension: the elimination of the death penalty will be conducive to the promotion of human rights and the rule of law, for respect for life is both universal and indivisible. The cause of abolition will progress inexorably until its victory is complete, because it is the cause of humanity.